

No. 13141

United States
Court of Appeals
For the Ninth Circuit.

FIBREBOARD PRODUCTS, INC., a Corporation,
Appellant,

vs.

W. H. TOWNSEND,
Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Superior Court of the State of California,
in and for the City and County of San Francisco

No. 393360

W. H. TOWNSEND,

Plaintiff,

vs.

FIBREBOARD PRODUCTS, INC., FIRST DOE,
SECOND DOE and DOE CORPORATION,

Defendants.

COMPLAINT

Comes now the plaintiff above named and complains of the above-named defendant and for cause of action alleges:

I.

That the true names of the defendants, First Doe, Second Doe and Doe Corporation are unknown to Plaintiff, and said defendants are therefore sued herein by said names which are fictitious and plaintiff hereby prays leave to charge said defendants herein by their true names when the same shall be ascertained, and to charge said defendants by suitable allegations herein and amendments hereto.

II.

That the defendant, Fibreboard Products, Inc., is a corporation organized and existing under and by virtue of the laws of the state of Delaware and is duly licensed and authorized to do business in the State of California, and is engaged in said

business in said state and has its principal place of business in the City and County of San Francisco in said State of California.

III.

That on or about the 18th day of October, 1948, at the City of Antioch, in the County of Contra Costa, State of California, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as a Recovery Operator in the Recovery Department of the San Joaquin Division of said Fibreboard Products, Inc., situated at Antioch, in said last named County and State, and that the defendants should employ this plaintiff as such Recovery Operator for an indefinite time, commencing upon the completion of the erection and construction of said Recovery Department of said San Joaquin Division of said Fibreboard Products, Inc., and that defendants would pay plaintiff for such services at the rate of \$1.725 per hour from and after the commencement of the term of said employment.

IV.

That the Recovery Department of said San Joaquin Division of said Fibreboard Products, Inc., was completed and ready for operation on or about the 15th day of October, 1949; that on the 2nd day of November, 1949, at Antioch, County of Contra Costa, State of California, the plaintiff offered to enter upon the services of defendants and has ever since been ready and willing to do so.

V.

That in pursuance of said agreement of employment and in pursuance of the promise and agreements of defendants to pay to plaintiff the cost of his transportation from the City of Tuscaloosa, Alabama, where he resided on said 18th day of October, 1948, to the City of Antioch, County of Contra Costa, State of California, plaintiff did remove from the said City of Tuscaloosa, to the said City of Antioch, at his cost and expense in the sum of \$500; and that, in pursuance of said agreement of employment and the said removal of plaintiff and his said family from the said City of Tuscaloosa to the said City of Antioch, for the purpose of rendering himself available for the performance of said contract on his part, plaintiff was obliged to and did sell and dispose of his household furnishings and effects in the City of Tuscaloosa and to purchase and acquire other household furniture and effects in the City of Antioch, to his cost, damage and expense in the sum of \$2,000; and further, by reason of the necessity for the removal of plaintiff from the said City of Tuscaloosa to the said City of Antioch for the purpose of complying with the said agreement of employment, plaintiff was obliged to, and did, vacate the housing accommodations occupied by him in the City of Tuscaloosa, at the monthly rental of \$32.50 and to acquire and occupy a resident housing accommodation in the said City of Antioch, at the monthly rental of \$80 to the cost, damage and expense to plaintiff in the sum of \$665 to the date of the com-

mencement of this action, and at the continuing loss, damage and expense to plaintiff at the rate of \$47.50 per month from and after the commencement of this action for a period of time, the duration of which plaintiff cannot now definitely state, except it will be for a considerable period.

VI.

That the defendants refused to permit the plaintiff to enter upon such service as such Recovery Operator or to pay him for his services to the damage of the plaintiff in the sum of One Hundred Thousand (\$100,000.00) Dollars.

Wherefore, plaintiff prays judgment against the plaintiff in the sum of One Hundred Three Thousand Six Hundred Fifteen (\$103,615.00) Dollars; damages accrued to the date of the commencement of this action; damages at the rate of Forty-seven and 57/100 (\$47.57) Dollars for such period of time as the Court shall adjudged it to have been reasonable for plaintiff to have occupied the housing accommodations in this complaint referred to; for his costs of suit herein incurred; and for such other and further relief as shall to the Court be meet and proper in the premises.

C. K. CURTRIGHT,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed January 26, 1950.

In the United States District Court for the Northern
District of California, Southern Division

No. 29449

W. H. TOWNSEND,

Plaintiff,

vs.

FIBREBOARD PRODUCTS, INC., FIRST DOE,
SECOND DOE, and DOE CORPORATION,

Defendants.

FIRST AMENDED COMPLAINT

Comes now the plaintiff above named and files, as of course, this, his first amended complaint, complains of defendants above named, and for cause of action alleges:

I.

That the true names of the defendants, First Doe, Second Doe, and Doe Corporation, are unknown to plaintiff, and said defendants are therefore sued herein by said names, which are fictitious, and plaintiff hereby prays leave to charge said defendants herein by their true names when the same shall be ascertained, and to charge said defendants by suitable allegations herein and amendments hereto.

II.

That the defendant, Fibreboard Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware and is duly licensed and authorized to do business

in the State of California, and is engaged in said business in said State and has its principal place of business in the City and County of San Francisco, in said State of California.

III.

That on or about the 18th day of October, 1948, at the City of Antioch, County of Contra Costa, State of California, the plaintiff and defendants mutually agreed, orally and in writing, that the plaintiff should serve the defendants as a recovery operator in the Recovery Department in the San Joaquin Division of said Fibreboard Products, Inc., situated at Antioch in the said last-named County and State, and that the defendants should employ the plaintiff as such recovery operator for so long as plaintiff should desire to be so employed and for so long as plaintiff's work should be satisfactory, said employment to commence upon the completion of the erection and construction of said Recovery Department of said San Joaquin Division of said Fibreboard Products, Inc., and the defendants would pay plaintiff for such services at the starting rate of \$1.725 per hour from and after the commencement of the term of said employment and that said employment would be continuous and permanent, with chances and opportunity afforded to plaintiff for increase in the rate of his hourly compensation, and opportunity would be afforded to plaintiff for advancement to other and higher grades of employment with said defendant corporation; that at said time and place, and as part of

the contract hereinbefore set forth, it was further mutually agreed by and between plaintiff and defendants, orally and in writing, that it would be necessary for plaintiff to remove from the City of Tuscaloosa in the State of Alabama, where he then resided, to the City of Antioch, in the County of Contra Costa, State of California, and that in consideration of the acceptance of said employment by the plaintiff and the removal of plaintiff from said City of Tuscaloosa to said City of Antioch, defendants would pay to plaintiff upon the commencement of the term of said employment, at the City of Antioch, County of Contra Costa, State of California, the reasonable cost and expense of plaintiff in the transportation of himself and his family from said City of Tuscaloosa to said City of Antioch, as aforesaid.

IV.

That the Recovery Department of said San Joaquin Division of said Fibreboard Products, Inc., was completed and ready for operation on or about the 15th day of October, 1949; that on the 2nd day of November, 1949, at Antioch, County of Contra Costa, State of California, the plaintiff offered to enter upon the service of defendants, and has ever since been ready, willing, and able to do so.

V.

That in pursuance of said agreement of employment and in pursuance of the promise and agreement of defendants to pay to plaintiff the cost of

transportation for him and his family from the City of Tuscaloosa, Alabama, where he resided on said 18th day of October, 1948, to the City of Antioch, County of Contra Costa, State of California, plaintiff, on or about the 15th day of November, 1948, did remove from the said City of Tuscaloosa, to said City of Antioch, at his cost and expense in the sum of \$500; and that, in pursuance of said agreement of employment and the said removal of plaintiff and his said family from the said City of Tuscaloosa to the said City of Antioch, for the purpose of rendering himself available for the performance of said contract on his part, plaintiff was obliged to and did sell and dispose of his household furnishings and effects in the City of Tuscaloosa, and to purchase and acquire other household furniture and effects in the City of Antioch, to his cost, damage and expense in the sum of \$2,000; and further, by reason of the necessity for the removal of plaintiff from the said City of Tuscaloosa to the said City of Antioch for the purpose of complying with the said agreement of employment, plaintiff was obliged to, and did, vacate the housing accommodations occupied by him in the City of Tuscaloosa, at the monthly rental of \$32.50 and to acquire and occupy a resident housing accommodation in the said City of Antioch, at the monthly rental of \$80 to the cost, damage and expense to plaintiff in the sum of \$665 to the date of the commencement of this action, and at the continuing loss, damage and expense to plaintiff at the rate of \$47.50 per month from and after the commence-

ment of this action for a period of time, the duration of which plaintiff cannot now definitely state, except it will be for a considerable period.

VI.

That the position of recovery operator is a highly skilled and specialized job requiring for its efficient performance years of experience and an extensive and thorough training; that said position is the highest grade of employee in the operation of a kraft paper mill; that plaintiff is fully and duly qualified by training, education, and experience to perform efficiently all and every one of the duties of a recovery operator, and that plaintiff is, and at all times herein mentioned has been, ready, able, and willing to do and perform all of the duties of said position.

VII.

That the defendants refused to permit the plaintiff to enter upon such service as such recovery operator or to pay him for his services, to the damage of the plaintiff in the sum of One Hundred Thousand Dollars (\$100,000.00).

Wherefore, plaintiff prays judgment against the defendants in the sum of One Hundred Three Thousand Six Hundred Fifty Dollars (\$103,615.00); damages accrued to the date of the commencement of this action; damages at the rate of Forty-seven and 50/100 Dollars (\$47.50) for such period of time as the Court shall adjudge it to have been reasonable for plaintiff to have occupied the hous-

ing accommodations in this complaint referred to; for his costs of suit herein incurred; and for such other and further relief as shall to the Court be meet and proper in the premises.

C. K. CURTRIGHT,

CHARLES R. GARRY,

/s/ C. K. CURTRIGHT,

Attorneys for Plaintiff.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 7, 1950.

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANT FIBREBOARD PRODUCTS, INC., TO PLAINTIFF

Pursuant to Rule 33, Federal Rules of Civil Procedure, defendant Fibreboard Products, Inc., hereby propounds the following interrogatories to be answered by plaintiff separately and fully in writing under oath:

* * *

2. State the name and address of the owner of that certain 1942 Pontiac automobile which plaintiff drove from Birmingham, Alabama, to Antioch, California, in November, 1948.

3. State the name and address of the individual

or individuals who granted plaintiff permission or authority to drive the said automobile from Tuscaloosa, Alabama, to Antioch, California.

4. Attach a copy of the letter or document or written statement purporting to authorize plaintiff to drive the said automobile from Tuscaloosa, Alabama, to Antioch, California. . . .

5. State the terms of the agreement or arrangement other than the letter, document or written statement referred to in Interrogatory 4 pursuant to which plaintiff obtained the said automobile and drove it from Tuscaloosa, Alabama, to Antioch, California, and the date upon which such agreement or arrangements were made.

6. State the name and address of the business establishment from whose custody the plaintiff obtained the Pontiac sedan hereinabove referred to and the date upon which plaintiff obtained the said automobile.

* * *

27. State the exact dates of the period during which plaintiff was employed by Otis Elevator Company in the State of Alabama in the year 1948.

28. State the name and address of the person who hired plaintiff and of each supervisor under whom plaintiff worked during the employment referred to in Interrogatory 27.

29. State the original terms of plaintiff's employment agreement with Otis Elevator Company referred to in Interrogatory 27, including:

- (a) Duration;
- (b) Wage rate;
- (c) Classification;
- (d) Type of work;
- (e) Any other term or conditions.

30. State any changes in the employment agreement referred to in Interrogatory 29 made in the course of the employment.

* * *

34. State the dates of the periods during which plaintiff has been employed by each of the persons or business organizations given in answer to Interrogatory 33.

35. State the gross amounts received by or owing to plaintiff or for which credit has been given plaintiff in each employment referred to in Interrogatories 33 and 34.

Dated March 31, 1950.

BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant
Fibreboard Products, Inc.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 31, 1950.

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES BY W. H.
TOWNSEND, PLAINTIFF, PROPOUNDED
BY DEFENDANT, FIBREBOARD PROD-
UCTS, INC.

United States of America,
State of California,
City and County of San Francisco—ss.

W. H. Townsend, being first duly sworn, deposes
and says:

That he is the plaintiff in the above-entitled ac-
tion and that he answers the interrogatories pro-
pounded to him by defendant Fibreboard Products,
Inc., pursuant to Rule 33, Federal Rules of Civil
Procedure, as follows:

* * *

2. 1942 Pontiac club coupe, Motor No. P 8 KA,
Lic. No. 512815, Maryland. Owned by Lt. B. E.
McCharen, Jr., U. S. Army, Yokohama, Japan.

3. Mrs. Montez S. McCharen, whose address at
that time was 304 Westover Drive, Birmingham,
Alabama.

4. Attached hereto as Exhibit A.

5. It was a verbal agreement that I was to pay
for gas and oil and grease jobs on car; any major
repairs by Mrs. McCharen. The first I knew of
this Pontiac car or of Mrs. Montez S. McCharen
was when I read an ad in the classified section of
the Sunday edition of the Birmingham News and

Age Herald on November 6, 1948. Telephoned 304 Westover Drive and spoke with Mrs. McCharen's mother, who told me that her daughter was asleep. I told her I would have my brother drive me to Birmingham in his car for a meeting regarding the driving of this car to Fort Mason, San Francisco. Met Mrs. Montez S. McCharen at 1:00 p.m. on Sunday, November 6, 1948, and an agreement was made. Returned to Birmingham on Monday, November 7, but car was in the shop and was told by Mrs. McCharen to return on Tuesday, November 8. On that date, she gave me written authority to get the car.

6. Shaver Pontiac Company Garage in Birmingham, Alabama, on Tuesday, November 9, 1948. Drove car to Tuscaloosa, Alabama, and left for Antioch on Wednesday, November 10, 1948.

* * *

27. Do not remember the date I was employed by Otis Elevator Company but I last worked up to November 7, 1948, and left the job at noon that day.

28. Mr. Ussery. I presume his address is c/o Otis Elevator Company, Atlanta, Georgia, but am not sure.

29. First hired at \$1.43 per hour and on September 12, 1948, increased to \$1.58 per hour. I was classified as an elevator erector's helper. Our job was to install Otis elevators. No limitation as to period of duration.

30. Only change was the 15c per hour increase in pay. My duties were the same.

* * *

34. Employed by the Southern Pacific Railroad Company from September 13, 1949, until February 7, 1950.

35. Total wages from Southern Pacific was approximately \$1,100, and, as I say, I may have made in the past seven months \$35 with Mr. Higgins.

/s/ W. H. TOWNSEND.

Subscribed and sworn to before me this 2nd day of June, 1950.

/s/ RAYMOND H. CRONIN,
Notary Public in and for the City and County of
San Francisco, State of California.

EXHIBIT A

(Copy)

“To Whom It May Concern

“I, Montez S. McCharen, wife of B. E. McCharen, Jr., 1st Lt., ASN 0-1327557, do hereby grant authority to Willie Hugh Townsend to transport one Pontiac Automobile, Club Coupe, Model 1942, motor number P8KA 3693 license number 512815 Maryland from Birmingham, Alabama, to San Francisco, California, at which place the automobile will be turned in to the Transportation Officer, Fort Mason, California, for the purpose of

being transshipped to B. E. McCharen, Jr., 1st Lt., U. S. Army, Yokohama, Japan.

“/s/ MONTEZ S. McCHAREN

“304 Westover Drive

“B’ham 9, Alabama

“(Priority 370 November.)”

Subscribed and sworn to before me this 8th day of November, 1948, Notary public, Jefferson County, Alabama.

[Seal] /s/ JACK VERNON DAVIDSON,
Notary Public.

My Commission Expires Oct. 20, 1952.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 6, 1950.

[Title of District Court and Cause.]

FIRST AMENDED ANSWER

Comes now defendant Fibreboard Products, Inc., one of the defendants in the above-entitled action, and in answer to the complaint on file herein admits, denies and alleges as follows:

I.

Answering paragraph III of the First Amended Complaint, defendant denies generally and specifically each and every, all and singular, the allegations contained therein. Defendant alleges that on

or about August 31, 1949, it offered employment to the plaintiff at its plant known as the San Joaquin Division, at Antioch, County of Contra Costa, State of California, and that plaintiff refused said offer of employment. Defendant further alleges that it employed plaintiff on a temporary basis from on or about November 24, 1948, until on or about September 3, 1949.

II.

Answering paragraph IV of the complaint, defendant alleges that the so-called recovery department of its plant known as the San Joaquin Division at Antioch, County of Contra Costa, State of California, was completed and ready for operation on or about October 15, 1949; defendant denies generally and specifically each and every, all and singular, the allegations of said paragraph IV not herein specifically admitted.

III.

Answering paragraphs V and VI of the complaint, defendant denies generally and specifically each and every, all and singular, the allegations contained in said paragraphs.

IV.

Answering paragraph VII of the complaint, defendant denies generally and specifically each and every, all and singular, the allegations contained therein and further denies that plaintiff has been damaged in the sum of One Hundred Thousand Dollars (\$100,000.00) or in any sum or at all, and

defendant alleges that it has paid plaintiff in full for any and all services rendered to defendant or requested to be rendered to defendant.

As and for a further answer to the First Amended Complaint on file herein, and by way of affirmative defense, defendant Fibreboard Products, Inc., alleges as follows:

1. The oral agreement or agreements alleged and referred to in paragraphs III, IV, V, VI and VII of the complaint are invalid and unenforceable, in that said contracts, either collectively or individually, are not in writing and subscribed by the party to be charged or by his agent.

Wherefore, defendant prays that it be hence dismissed with its costs of suit herein incurred, and for such other relief as to the Court may seem meet and proper in the premises.

Dated September 22, 1950.

BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant,
Fibreboard Products, Inc.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 25, 1950.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between counsel for plaintiff and counsel for Fibreboard Products, Inc., one of the defendants, that the testimony of Mr. E. R. Utley, a witness called by said defendant in the above-entitled matter, whose business address is c/o Otis Elevator Company, Durham, North Carolina, may be taken pursuant to this Stipulation, and by means of the written interrogatories attached hereto, that Mr. Utley may answer the said interrogatories in writing and subscribe to same before a notary public or other officer commissioned to administer oaths, and that the interrogatories and the written answers thereto may be used in the trial of the above-entitled matter to the same extent and with the same force and effect as though the witness appeared in person and testified in said trial.

Dated September 13, 1950.

/s/ C. K. CURTRIGHT,

/s CHARLES R. GARRY,

Attorneys for Plaintiff.

BROBECK, PHLEGER &
HARRISON,

Attorneys for Defendant,

Fibreboard Products, Inc.

[Title of District Court and Cause.]

DEPOSITION OF E. R. UTLEY

I, Leslie Ford, a Notary Public in and for the County of Durham, State of North Carolina, do hereby certify that, within the jurisdiction of my authority, on September 15, 1950, at 4:00 p.m., pursuant to Stipulation attached hereto, which was entered into in the above-numbered and styled cause, dated September 13, 1950, personally appeared E. R. Utley, a witness for the defendant named in said stipulation; and the said E. R. Utley being by me first duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth concerning the matter in controversy, did depose and say, in answer to the direct interrogatories propounded in this case, read to him by me:

Questions Upon Direct Examination of E. R. Utley Upon Written Deposition.

1. State your name.
2. State your address.
3. By whom are you employed?
4. In what capacity are you employed?
5. By whom were you employed from the middle of August, 1948, until the middle of November of that year?
6. In what capacity were you employed during the period referred to in Interrogatory No. 5?

7. What were your duties during the employment referred to in Interrogatory No. 5?

8. Where did you perform your duties during the period referred to?

9. Did you have authority to employ an elevator mechanic's helper or an elevator erector's helper?

10. Did you employ Mr. Willie Hugh Townsend during the month of August, 1948?

11. If the answer to Interrogatory 10 is in the affirmative, please state the date when you employed Mr. Townsend.

12. State whether the contract of employment with Mr. Townsend was written or oral.

13. If the contract of employment was written, please attach it to your answers to these interrogatories, or, if the original is not available, explain where it is and attach a copy.

14. If the contract of employment was oral, please state its terms and conditions, including wages, hours, place or places of employment, job title or classification, duration of employment and any other provisions.

15. Is there any custom in the elevator construction business with respect to hiring helpers?

16. If the answer to Interrogatory 15 is in the affirmative, please state what the custom is.

17. State whether Mr. Townsend was employed on construction work.

18. Please state whether Mr. Townsend was employed on a temporary or permanent basis.

19. If there were any changes in the terms or conditions of Mr. Townsend's employment between the date of employment in August and the termination of his employment, please state the changes.

20. State the location of the job or jobs on which Mr. Townsend was employed.

21. State the date of completion of the job or jobs.

22. State the date upon which Mr. Townsend's employment was terminated.

Questions Upon Cross-Examination of E. R. Utley Upon Written Deposition

1. What is your present capacity in your employment and what duties do they entail?

2. What sum per hour did Mr. Townsend earn at the time he terminated his employment?

3. What was Mr. Townsend's total earning for the five months immediately preceding the termination of his employment?

4. Did Mr. Townsend resign his position or was he discharged?

5. Could Mr. Townsend have continued his employment with you, and if so, for what period of time?

6. Please state your opinion of Mr. Townsend as an employee as to the following:

- a. Conscientiousness.
- b. Ability to take orders and directions.
- c. Ability to get along with fellow workers.
- d. Reliability.
- e. Honesty and trustworthiness.
- f. Leadership.
- g. Initiative.
- h. Sobriety.
- i. Loyalty.
- j. Efficiency.

Answer to Direct Interrogatory No. 1: E. R. Utley.

Answer to Direct Interrogatory No. 2: 1116 Ninth Street, Durham, North Carolina.

Answer to Direct Interrogatory No. 3: I am employed by Otis Elevator Company.

Answer to Direct Interrogatory No. 4: Local Representative in Durham.

Answer to Direct Interrogatory No. 5: By Otis Elevator Company.

Answer to Direct Interrogatory No. 6: I was Elevator Erector.

Answer to Direct Interrogatory No. 7: Servicing and installing elevators.

Answer to Direct Interrogatory No. 8: I was working out of our Zone Office, which is in At-

lanta, and among other places, in Tuscaloosa, Alabama.

Answer to Direct Interrogatory No. 9: An elevator erector and elevator mechanic is the same. Sure.

Answer to Direct Interrogatory No. 10: Yes.

Answer to Direct Interrogatory No. 11: About August 29, 1948.

Answer to Direct Interrogatory No. 12: Part written and part oral.

Answer to Direct Interrogatory No. 13: I have no copy. The original is kept with the pay roll records in the Atlanta Office.

Answer to Direct Interrogatory No. 14: We were to pay him about \$1.57 per hour eight hours per day or forty hours per week to work in Tuscaloosa, Alabama, as elevator erector's helper. Nothing was said about duration of his employment.

Answer to Direct Interrogatory No. 15: Yes.

Answer to Direct Interrogatory No. 16: When an elevator constructor does not have regular experienced assistant elevator constructors, he hires the best assistants he can find for varying periods of time.

Answer to Direct Interrogatory No. 17: Yes, he was.

Answer to Direct Interrogatory No. 18: On a temporary basis.

Answer to Direct Interrogatory No. 19: There were no changes.

Answer to Direct Interrogatory No. 20: Bryce Hospital, University of Alabama, and Gulf States Paper Corporation, all in Tuscaloosa, Alabama.

Answer to Direct Interrogatory No. 21: All the jobs in Tuscaloosa were completed around November 15, 1948.

Answer to Direct Interrogatory No. 22: About a week and a half before the jobs were completed.

And said witness did depose and say, in answer to the cross-interrogatories propounded in this case, read to him by me:

Answer to Cross-Interrogatory No. 1: Local Representative in Durham, North Carolina, of Otis Elevator Company. Service, sales, and general representation.

Answer to Cross-Interrogatory No. 2: About \$1.57 per hour.

Answer to Cross-Interrogatory No. 3: I do not have that information.

Answer to Cross-Interrogatory No. 4: He resigned.

Answer to Cross-Interrogatory No. 5: He could have continued his employment with us but for what period of time I can't say as he resigned before the Tuscaloosa jobs were finished.

Answer to Cross-Interrogatory No. 6: My opinion of Mr. Townsend as an employee was:

- a. He really was conscientious.
- b. His ability to take orders was good.
- c. His ability to get along with fellow workers was good.
- d. Reliability—good.
- e. As far as I know—good.
- f. Leadership—fair.
- g. Initiative—fair.
- h. Fair.
- i. Good.
- j. Good.

And further he answers not.

/s/ E. R. UTLEY.

Subscribed and sworn to before me this 16th day of September, 1950.

[Seal] /s/ LESLIE FORD,
Notary Public.

My Commission Expires 10-9-51.

I do hereby further certify that the answers of the witness to the interrogatories were stenographically taken and transcribed, in the exact language of the witness; and, after they had been fully transcribed, were read by the said E. R. Utley and signed in my presence; and I further certify that

I am not a relative, or employee, or counsel or attorney to either of the parties.

[Seal] /s/ LESLIE FORD,
Notary Public.

My Commission Expires 10-9-51.

[Endorsed]: Filed September 20, 1950.

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

Upon presentation of findings of fact and conclusions of law it is hereby ordered that judgment be entered in favor of the plaintiff and against the defendant in the sum of \$2,530.25, together with the plaintiff's costs of suit incurred herein.

It is the opinion of the court that a contract of employment was entered into between plaintiff and defendant, and pursuant thereto the plaintiff quit his job in Alabama and came to California to perform this contract of employment. When the employment for which he contracted became available he was refused employment. Under the authority of *Millsap v. National Funding Corp.*, 57 C.A. (2d) 772; and *Seifert v. Arnold Bros., Inc.*, 138 C.A. 324, the contract of employment must be considered to be permanent, and in accordance with the *Mill-sap* case, *supra*, two years must be considered to be a reasonable period of time. The court is of the opinion that during the two year period following November 2, 1949, when the plaintiff presented

himself ready, willing and able to perform the contract of employment, he would have earned \$7,-176.00. During this two-year period, if he continues in his present occupation, he will have earned \$4,645.75, leaving a loss in earnings for the two-year period in the sum of \$2,530.25.

The court is of the opinion that the plaintiff is not entitled to recover for traveling expenses from Alabama to California, because at the time of the contract of employment the defendant did not offer to pay his traveling expenses as a part of the contract of employment. And for the same reason neither is the plaintiff entitled to recover for any of the other items of special damages which he has alleged in his complaint.

Let the counsel for the plaintiff present findings of fact and conclusions of law in accordance herewith.

Dated June 25, 1951.

/s/ OLIVER J. CARTER,

United States District Judge.

[Endorsed]: Filed June 25, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial before this Court sitting without a jury on the 11th and 12th days of October, 1950, C. K. Curtright and Charles R. Garry appearing as attorneys for plaintiff, and Brobeck, Phleger & Harrison, by Samuel L. Holmes appearing as attorneys for defendant Fibreboard Products, Inc., and the Court having heard all the testimony and having examined the proofs offered by the parties, and the cause having been duly submitted, and the Court being fully advised in the premises, finds as follows:

Findings of Fact

1. That it is true that on or about the 18th day of October, 1948, the plaintiff and the defendant Fibreboard Products, Inc., entered into an oral and written permanent contract of employment whereby the parties mutually agreed that plaintiff should be employed by defendant corporation in the capacity of a recovery operator in the Recovery Department of the San Joaquin Division of said defendant corporation's newly constructed paper pulp mill plant at Antioch, California, said employment to commence when defendant's paper mill plant began operations, and to continue for so long as plaintiff's work was satisfactory, and that plaintiff's permanent position would be at the prevailing hourly rate of \$1.725 per hour, forty hours per

week, fifty-two weeks per year. It was further agreed that plaintiff would remove from the City of Tuscaloosa, Alabama, to Antioch, California, and pending the opening of defendant's paper pulp mill, said defendant would endeavor to find other employment for plaintiff.

2. That it is true that at the time of the agreement between the parties, defendant corporation was advertising for and in need of experienced paper pulp men, and was creating a labor pool of experienced pulp mill men in contemplation of the opening of the pulp mill plant in Antioch, California.

3. That it is true that plaintiff had had many years of experience in many phases of the paper pulp mill industry and was a seasoned and experienced recovery operator.

4. That it is true that plaintiff was gainfully employed in Tuscaloosa, Alabama, at the time of the agreement and that he did leave said employment and did remove with his family to Antioch, California, and that he did pay his own expenses for said move, and plaintiff did dispose of his furniture and personal belongings in order to remove to defendant's place of employment.

5. That it is true that on or about November 2, 1949, defendant corporation's paper pulp mill was ready for operation, at which time, plaintiff did present himself ready, willing, and able to perform his part of the contract of employment.

6. That it is true that when the employment for which plaintiff was contracted became available, defendant corporation refused, and does now refuse, to fulfill the terms of the said contract, and refused, and does now refuse, to employ the plaintiff.

7. That it is true that plaintiff has performed all of the things and matters on his part to be performed under the terms of the said contract and that defendant corporation has wholly failed to perform the things and matters on its part to be performed under the said contract of employment.

8. That it is true that a contract for permanent employment in the State of California is a contract to retain in employment for a reasonable period of time, and that a reasonable period of time is two years.

9. That it is true that had plaintiff entered into the employ of defendant corporation as contracted at the time plaintiff presented himself ready, willing, and able, to the said defendant corporation, he would have earned the sum of \$7,176.00 during a two year period. If plaintiff continues in his present occupation, he will have earned \$4,645.75, or sustained a loss of earnings for the two year period in the sum of \$2,530.25.

From the foregoing facts, the Court concludes:

Conclusions of Law

1. That defendant corporation did breach the contract of employment and that plaintiff is en-

titled to judgment in the sum of \$2,530.24, together with his costs of suit.

Let judgment be entered accordingly.

Dated this 17th day of September, 1951.

/s/ OLIVER J. CARTER,
United States District Judge.

Receipt of Copy acknowledged.

Lodged September 11, 1951.

[Endorsed]: Filed September 17, 1951.

In the United States District Court for the
Northern District of California, Southern Division

No. 29449

W. H. TOWNSEND,

Plaintiff,

vs.

FIBREBOARD PRODUCTS, INC., et al.,

Defendants.

JUDGMENT

This cause came on regularly for trial before the Court sitting without a jury, on the 11th and 12th days of October, 1950, Messrs. Charles R. Garry and C. K. Curtright appeared as attorneys for plaintiff, and Messrs. Brobeck, Phleger & Harrison, by Samuel L. Holmes appeared as attorneys for

defendant Fibreboard Products, Inc., and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith; now, therefore, by reason of the law and findings aforesaid:

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That plaintiff have judgment against the defendant Fibreboard Products, Inc., in the sum of \$2,530.25, with interest thereon at the rate of seven per cent per annum from date hereof until paid.

2. That plaintiff have judgment against defendant Fibreboard Products, Inc., for his costs herein taxed at \$35.75.

Dated this 20th day of September, 1951.

/s/ OLIVER J. CARTER,
United States District Judge.

Lodged August 31, 1951.

[Endorsed]: Filed September 20, 1951.

Entered September 20, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given this 3rd day of October, 1951, that Fibreboard Products, Inc., one of the defendants above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on September 20, 1951.

/s/ SAMUEL L. HOLMES,

BROBECK, PHLEGER &
HARRISON,

Attorneys for Appellant
Fibreboard Products, Inc.

[Endorsed]: Filed October 3, 1951.

In the Southern Division of the United States
District Court for the Northern Division of
California

No. 29449

W. H. TOWNSEND,

Plaintiff,

vs.

FIBREBOARD PRODUCTS, INC., et al.,

Defendants.

REPORTER'S TRANSCRIPT

Wednesday, October 11, 1950

Before: Oliver J. Carter, Judge.

Appearances:

For the Plaintiff:

C. K. CURTRIGHT ESQ., by
CHARLES R. GARRY, ESQ.

For the Defendants:

BROBECK, PHLEGER & HARRISON,
by
SAMUEL L. HOLMES, ESQ., and
MALCOLM TUFT, ESQ.

WILLIE HENRY TOWNSEND

the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Clerk: Would you state your name and address to the Court?

A. Willie H. Townsend, 511 Third Street, Antioch, California.

Direct Examination

By Mr. Garry:

Q. Mr. Townsend, you are the plaintiff in this action, are you not? A. Yes, sir.

Q. You live in Antioch, California?

A. Yes.

Q. How long have you been there?

A. Since November 15, 1948.

Q. Before that where did you live?

A. 2124 Eighth Street, Tuscaloosa, Alabama.

Q. Tuscaloosa, Alabama?

A. That is correct.

Q. How did you come to California? I mean, how did you come to change your place of residence?

A. Well, I saw a notice in the Southern Pulp & Paper Manufacturer Journal out of Atlanta advertising for a new [2*] Pacific Coast kraft pulp mill and I answered the ad, and on or about the 4th or 5th of September, 1948, I received a letter dated September 1, 1948, from Mr. Stitt, stating that my application to the trade journal in Atlanta had been forwarded along with the recommendation from the North Carolina Pulp & Paper Company.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Willie Henry Townsend.)

Q. On August 26th, 1948, you said you sent them a letter, is that right?

A. That is correct.

Q. I show you a letter and ask you if that is the letter that you sent? A. That is right.

* * *

The Clerk: Plaintiff's Exhibit 1 in evidence.

(Whereupon letter referred to above was marked Plaintiff's Exhibit No. 1 and received in evidence.) [3]

PLAINTIFF'S EXHIBIT No. 1

Tuscaloosa, Ala.

Aug. 26, 1948

Box 24,
Southern Pulp & Paper Manufacturer,
75 Third St. N. W.,
Atlanta, Ga.

Dear Sir:

Would like to make application for one of the jobs in the new Pacific Coast Kraft Pulp & Paper Mill that you expect to start up around Dec. 1st, 1948. I have 20 years experience in kraft pulp mill work; having started with the Gulf States Paper Co., here, at Tuscaloosa, Ala., and served as a foreman at N. C. Pulp Co. Plant at Plymouth, N. C. Also served as Recovery Plant Foreman and Tour Foreman, and General Foreman for the N. C. Pulp Co. for nine years.

(Testimony of Willie Henry Townsend.)

I am married, have wife and three daughters. Do not drink and can furnish best of reference. Have never missed a day's work during the past 20 years of pulp mill work.

I would appreciate a job with you people. Will close with best regards, and hoping that I will hear from you in the near future.

I am enclosing a copy of letter of recommendation from the N. C. Pulp Co.

With best regards I remain yours truly,

W. H. TOWNSEND,

Apt. 23A Druid Gardens,
Tuscaloosa, Ala.

P.S.

I can report for work at any time and I will take any job you have to offer me.

Thanks.

Received August 31, 1948.

[Endorsed]: Filed October 11, 1950.

Q. Did you receive a reply from the letter I just now read to the Court?

A. The next reply I had from that was a letter dated September 1st, signed by Mr. Claude Stitt, manager, San Joaquin Division, Fibreboard Products, Inc., Antioch, California.

Q. That is these defendants both here?

(Testimony of Willie Henry Townsend.)

A. That is correct.

Q. I show you this letter and ask you if that is a copy of a letter you received from them?

A. That is correct. That is a copy of the letter that I received on about September 4th or 5th, I received that. [5]

* * *

The Clerk: Plaintiff's Exhibit 2 in evidence.

(The letter referred to was marked Plaintiff's Exhibit 2 in evidence.) [6]

PLAINTIFF'S EXHIBIT No. 2

September 1, 1948

Mr. W. H. Townsend,
23A Druid Gardens,
Tuscaloosa, Alabama.

Subject: Possibility of Employment in Pulp Mill.

Dear Mr. Townsend:

Your letter of August 26th to the Southern Pulp and Paper Manufacturer has been referred to the undersigned.

In connection with said letter we are enclosing one of our standard application for employment blanks which we would like to have you fill out and return at your earliest convenience.

Based on your experience we feel that you can be reasonably assured that we will have some position available for you. However, before making

(Testimony of Willie Henry Townsend.)

actual commitments we are waiting until our Pulp Mill Superintendent gets on the job and he will have as one of his first responsibilities the job of lining up the various crews. For your information a Mr. T. Lindley will be our Pulp Mill Superintendent and he will be on the job as of October 1st.

Feeling that you may want for your record the recommendation given you by Mr. Rasmuson of the North Carolina Pulp Company we are enclosing same with this letter. However, we have taken the liberty of making a copy of said reference for our files.

Thanking you for your inquiry and awaiting the return of the filled-out application blank, we remain,

Yours very truly,

FIBREBOARD

PRODUCTS, INC.,

San Joaquin Division.

C. M. STITT,

Plant Manager.

CMS:ZR

Encls.

[Endorsed]: Filed October 11, 1950.

* * *

Q. Now, no, Mr. Townsend, after you received the letter of September 1, what did you do? [7]

A. I filled out this application; made application for tour foreman's job, due to the fact that I had

(Testimony of Willie Henry Townsend.)

been tour foreman with the North Carolina Pulp & Paper covering the entire pulp mill.

And then on the 18th of October I called Mr. Lindley on the telephone, and he told me that he had a copy of my letter of recommendation, also my letter to Mr. Stitt, and a copy of Mr. Stitt's letter to me; that they was looking for experienced kraft pulp mill men, and a man with 20 years, it seemed like I ought to be qualified, and he tell me that if I wanted a position out there that they would place me in one of the other plants until such time as they could use me in the new mill.

I asked him, would it be a permanent job, and he told me that I could depend on it to be a permanent job. I told him in that case I would bring my family and I would come prepared to make California my home from now on; that I was getting old, I wanted to stick in one place and settle down. He asked me did I have transportation. I said yes, sir, I had enough money. He said it would be refunded. As far as my driving a car out here, I didn't tell Mr. Lindley that.

Q. Please state the conversation and don't anticipate what someone else will say. Please don't do that. I think we will get along better.

A. So I told Mr. Lindley that I would report for work on the [8] 15th of November, 1948.

Q. This is over the telephone on October 18th, 1948?

A. Yes, sir, that's right.

Q. Had you sent in your application prior to that time?

(Testimony of Willie Henry Townsend.)

A. Yes, sir, I sent in my application in September.

Q. Do you recall what date in September?

A. It must have been around between the 6th and the 10th.

Mr. Garry: Do you have a copy of the application?

Mr. Holmes: Yes, I do, but there have been some markings put on it which I preferred to have a witness explain. I intended to offer it as my exhibit.

Mr. Garry: That is all right.

Mr. Holmes: After these additional markings on it had been explained.

The Court: All right.

Mr. Garry: That is perfectly all right.

The Court: You proceed with your case as you see fit.

Q. (By Mr. Garry): This was the conversation you had on October 18th? A. Yes.

Q. Did you hear from any of the defendants after that?

A. I received a letter on or about October 24th from—dated October 19th, from Mr. Lindley.

Q. Is this the letter that you received from the defendants, Mr. Townsend (showing)? [9]

A. That is the letter I received on or about October 24th.

* * *

The Clerk: The Plaintiff's Exhibit 3 in evidence.

(Testimony of Willie Henry Townsend.)

(Letter referred to was marked Plaintiff's Exhibit No. 3 in evidence.) [10]

PLAINTIFF'S EXHIBIT No. 3

Fibreboard Products, Inc.

San Francisco

San Joaquin Division

October 19, 1948.

Mr. W. H. Townsend,
Apt. 23A Druid Gardens,
Tuscaloosa, Alabama.

Subject: Possibility of Employment in Recovery Department.

Dear Mr. Townsend:

We were pleased to receive your telephone call of October 18th.

In line with our conversation the new mill is still under construction and it will be about the first of March before actual operations begin. However, if it is your desire to come to the coast at an earlier date we will place you in one of our mills at whatever they might have for you until we begin operating.

Housing, as far as rentals are concerned, is very critical. However there are homes available for purchase ranging in price from \$6,500 to \$9,000.

(Testimony of Willie Henry Townsend.)

Thanking you for your telephone call, we remain,

Yours very truly,

FIBREBOARD

PRODUCTS, INC.,

San Joaquin Division,

/s/ M. T. LINDLEY,

M. T. Lindley,

Pulp Mill Superintendent.

MTL:GR

cc N. M. Brisbois

T. N. Bland

G. B. McCuish

[Endorsed]: Filed October 11, 1950.

Q. Did you do anything after you received that letter in furtherance of your coming to California?

A. No, I didn't. I had told him on the telephone on the 18th that I would report for work, for duty on November 15th. So I quit my job with Otis Elevator on or about the 20th of October. I tell Mr. Utey that I was leaving on or about [11] November 7 for California.

The Court: When was that that you quit?

A. I turned in my resignation on or about the 20th. My last day's work with Otis Elevator was November 7 at noon.

Q. (By Mr. Garry): You were working for the Otis Elevator Company at the time? A. Yes.

(Testimony of Willie Henry Townsend.)

Q. What were you doing there?

A. I was elevator erector helper at \$1.58 an hour, double time for all overtime.

Q. How long had you been working there?

A. I had been working for them a little better than three months. I think I went to work for them in August?

Q. And you left your employment at that time?

A. That is correct.

Q. And then what did you do?

A. Well, on Sunday morning, November 6th, my mother brought a Birmingham News Age Herald in and told me there was an ad——

Q. Mr. Townsend, so that there won't be any objection from the Court or the attorneys on the other side, please don't tell us what some other person said, except what the defendants ever said to you.

A. I had told Mr. Utley November 7th would be my last day. On Sunday, November 6th, I saw in the Birmingham News Age Herald an ad where a lady was wanting somebody to drive a car [12] to Fort Mason, California. She inserted this ad on a Saturday; it came out Sunday morning and gave the telephone number in Birmingham. I called the lady on the telephone, told the lady I had permission to be in Antioch on November 15th to go to work for Fibreboard Products, Inc., and told her that I could furnish her with references, if she hadn't engaged somebody to drive this Pontiac to drive this car to Fort Mason, that I would be glad to

(Testimony of Willie Henry Townsend.)

come to Birmingham and talk with her in regards to bringing it out here for her. I told her I had a wife and three daughters, if I brought the car out here for her I would want to bring my family along with me. So a brother who is a superintendent of the Southside Post Office drove me to Birmingham, Alabama, and I talked to the lady, that due to—after she read this letter from Mr. Stitt and Mr. Lindley, so she figured I had a position in California, so she granted me permission to drive out the Pontiac car and bring my wife and daughters, and that was my mode of transportation to California.

Mr. Holmes: I move to strike that portion of the answer which has to do with what other people figured or said.

The Court: It will go out. [13]

* * *

Q. Mr. Townsend, you drove a vehicle, did you, that you engaged some time in November?

A. That is true.

Q. Now what day did you get the automobile?

A. On the 8th day of November.

Q. On the 8th day of November you started toward California, is that correct?

A. That is true.

Q. I notice in your interrogatories the defendants propounded to you that you enumerated the total expenses at \$209.35; is that correct?

A. That is the actual meals and gas and oil.

(Testimony of Willie Henry Townsend.)

Q. You have expended that money bringing your family and yourself in this automobile?

A. That is correct.

The Court: What is that figure again?

Mr. Garry: \$209.35.

Q. Is that the total amount that you spent in transportation down here?

A. That was all I spent on transportation. I spent more than that, you know, the kids have got to buy something; but that is the actual cost of transportation.

Q. What else did you do in coming out to California after you received this letter from Mr. Lindley on the 20th day of October, 1948? [14]

* * *

A. We disposed of all our household furnishings due to the fact that we had inquired as to the cost of bringing it out here. It was prohibitive. It would cost five or six hundred dollars to ship it out. I didn't have that much money to pay for it, and I felt that I could dispose of it for money that would help me pay my debts to a certain extent, and leave me money to make the trip and enough—and part of the money that I got from the sale of the furniture we used. Some furniture we sold after we arrived in November. We had left it with my mother, and she disposed of it, and altogether—

Q. How much did you have?

Mr. Holmes: We object to that as calling for a conclusion of the witness. [18]

* * *

(Testimony of Willie Henry Townsend.)

The Court: I will overrule the objection.

A. I married in 1923. I bought one bedroom set from C. W. Allen, Tuscaloosa, Alabama, who has been in business over the past 55 years, business in furniture, and they are still there, and the number of the place is 2327—2227 is the number, I think, on the corner of 23rd Avenue and 6th Street. I bought a bedroom suite from them and paid between four and five hundred dollars for it. That was in 1923. It was pre-war stuff. I bought the furniture from C. W. Allen, and I bought it from the Home Furniture Company, and as I say, I accumulated this [19] over a period of approximately 25 years. The actual cost—I don't have that good a memory; I don't remember that it cost, but I had five rooms of furniture, enough to furnish five rooms before I came to California, and it cost me better than \$2,000, your Honor, and I bought it over a period of years. I ran up a bill in Antioch, and when these people didn't give me a job, I said to the people there, "Come on over; you will have to take your furniture back." He said, "Let me look at the bill." He said, "Townsend, you do as you like about that bill; but come on over to the office."

Mr. Holmes: Your Honor, I move that that answer be stricken out.

The Court: That part of the answer that refers to what this furniture company said to him and what he said to them will go out.

(Testimony of Willie Henry Townsend.)

The Witness: I haven't paid them anything since these people let me go.

The Court: Just a moment. You answer the questions propounded to you by counsel.

Q. (By Mr. Garry): You had five rooms of furniture, is that correct? A. Yes.

Q. At Tuscaloosa? A. Yes, sir.

Q. On or about the end of October, 1948? [20]

A. Yes, sir. [21]

* * *

Q. (By Mr. Garry): What did you have in the five rooms of furniture, Mr. Townsend?

A. Well, I had a kitchen outfit and a dining room set, a rug; and I had a bedroom set and three iron beds and a living room bed and chairs and a sofa.

Q. Anything else?

A. Well, there was some mirrors. In other words, what an ordinary person would have in a five-room home I had in mine, that I had accumulated over a period of 25 years.

Q. And do you know what you paid for the total amount of furniture you had?

A. No, sir, I don't.

Q. Do you know what you had to pay the same equivalent amount of furniture?

A. I haven't duplicated it yet.

* * *

The Court: Do you have any approximate idea of how [22] much you paid for it?

(Testimony of Willie Henry Townsend.)

A. I would say \$2500, your Honor.

Q. That is your only independent recollection?

A. Yes.

Q. (By Mr. Garry): Some of this furniture you had since 1923 and others you discarded and replaced as the years went on; is that true?

A. That is correct. Some of it my wife inherited from her father's estate.

Q. You are not counting that as part of the \$2500, are you?

* * *

A. No, sir, I am not. That was a bookcase with a bunch of old books.

Q. Your best estimate is that this furniture that you purchased yourself over a period of years cost \$2500?

A. Yes, sir.

Q. And at the time, the end of October, 1948, what shape was that furniture in?

A. It was in good shape.

Q. You mean you were able to use it?

A. Yes, sir.

Q. What did you sell this furniture for? [23]

* * *

A. As I said in my previous testimony, that we disposed of most of it before we left, but some of it was sold after we left Tuscaloosa, Alabama, and it was less than \$900 altogether.

The Court: How much was it, about?

A. The exact amount?

(Testimony of Willie Henry Townsend.)

Q. Approximately, as near as you can give it to me.

A. Between eight and nine hundred dollars, your Honor.

Q. (By Mr. Garry): Now, Mr. Townsend, you say you have been in paper work for 20 years?

A. I worked in kraft pulp mills for 20 years since 1928, and with the exception of two years that I was union representative for the International Brotherhood of Pulp and Sulphite Paper Mill Workers and Operating Engineers, which have charters in the paper mills and paper mills throughout the South.

Q. Which years did you work for the International? A. '46 to '47.

Q. Which years did you work in the actual paper industry?

A. I went to work for the Gulf States Paper Company on the 6th day of June, 1928; I left them in 1935 and went to work with the North Carolina Pulp and worked with them until the 14th of April, 1945. [24]

Q. Whom did you go to work for after that?

A. I went to work for the Operating Engineers.

Q. As business agent?

A. No, when I left the North Carolina Pulp and Paper Company I went to work for the Burlington Railroad in Lincoln, Nebraska.

Q. When did you go to work as business agent?

A. I went to work for them, I think, the 1st of May, 1946.

(Testimony of Willie Henry Townsend.)

Q. Where did you go to work?

A. I worked with Division 1 of the Pulp Sulphite and Paper Workers, A F of L.

Q. As representative for them?

A. Field representative, covering the paper industry in the South.

Q. Tell us what happened when you came to California, Mr. Townsend.

A. I arrived here on the night of the 14th of February and went to Mr. Lindley's office on the morning of the 15th of November and introduced——

Q. That is 1949, is it not?

A. 1948. And I introduced myself to Mr. Lindley. And he told me, he said, "Well, all salaried jobs have been filled, Townsend; you can pick out any job you want in the pulp mill and I will be glad to put you there." I said, "Mr. Lindley, due to the fact I have 13 years in the recovery department, I will apply for a recovery operator's job." That was the understanding. [25] He said, "I will see if I can get you a job in a week or ten days in the San Joaquin Division." I says, "Mr. Lindley, I was bringing my family up here to live in Antioch, and I only got seven bucks on hand." I said, "Don't you have a plant here in Antioch, in the Antioch Division?" He said, "Yes." He said, "It may take a few days to get you located." I said, "That's all right; I am willing to wait." So I waited approximately one week; I think it was on either the 22nd or 23rd I went to work for

(Testimony of Willie Henry Townsend.)

Mr. Van Voorhis, the gentleman sitting back there on the seat—I wouldn't be positive—either the 22nd or 23rd of November, 1948, I went to work for him as a Class B helper in the mechanical department.

Q. Let us get to the conversation you had with Mr. Lindley on November 15, 1948. You say he offered you a recovery operator's job at that time?

A. He told me that tour foremen's jobs had all been promised in the pulp mill but, he says, "You can pick any job you want in the pulp mill and I will give it to you; the first vacancy as tour foreman I will give you consideration, because you are an experienced man." He asked me about how long I had worked in various departments of the mill, and he also asked me did I want a digest cook's job. I told him I preferred a recovery operator; I felt I could be of more service to the company because I had more service as a recovery operator.

Q. When did he tell you he would have a recovery operator's [26] job for you?

A. On the 15th of November he said as soon as the plant got ready to operate.

Q. That is the plant you came down here for?

A. Yes, sir, the San Joaquin Division.

Q. Did he tell you what that job paid?

A. He didn't tell me that particular day, no.

* * *

Q. (By Mr. Garry): What did it pay October 14, 1949? A. \$1.75 and 1/2 an hour.

* * *

(Testimony of Willie Henry Townsend.)

Q. Do you know what it pays at the present time?

A. They got about a seven cent an hour increase.

Q. How much?

A. Seven cents an hour since that time.

Q. Did you discuss with him about your transportation fare on the 15th day of November?

A. No, sir. [27]

Q. You didn't discuss that subject with him?

A. No, sir.

Q. Then what happened, Mr. Townsend?

A. As I say, I went to work with Mr. Van Voorhis on about the 22nd or 23rd of November.

Q. Doing what?

A. Working in the mechanical department as Class B helper, \$1.54 an hour.

Q. You continued doing that until when?

A. September 2, 1949.

Q. Then what happened?

A. He called me in the office and told me my services were no longer needed.

Q. Who called you in the office?

A. Mr. Sanford, the manager.

Q. What did he say?

A. When I walked in he handed me a letter and said, "Your services are no longer required, and you can go in the office and get your pay." I told him, "being I am going to be in Antioch on the 7th, I would prefer to take my money on the 7th." I didn't open the letter, I just stuck it in my

(Testimony of Willie Henry Townsend.)

pocket, but I didn't even read the letter until I got out of the plant. The letter was from Mr. Van Voorhis stating that I was let out.

Q. You say this letter was given you on September 2, 1949?

A. By Mr. Sanford, the manager of the Antioch plant of [28] Fibreboard.

Q. Is this the letter that was given you, Mr. Townsend? (Showing the letter.)

A. Yes, that is the original letter that was given to me by Mr. Sanford, manager of the Antioch plant.

* * *

The Clerk: Plaintiff's Exhibit 4 in evidence. [29]

PLAINTIFF'S EXHIBIT No. 4

Fibreboard Products, Inc.
Antioch, California

September 2nd, 1949

Mr. W. H. Townsend
2602 Wills Ave.
Antioch, California

Dear Sir:

During the last several months it has been our policy to give employment to applicants referred to us by the San Joaquin Division. Oftentimes extra jobs were made, men were placed on jobs above their qualifications, or given jobs which would have been filled with a more qualified type of employee either hired or preferably from our own ranks.

(Testimony of Willie Henry Townsend.)

Due to the curtailment of our Maintenance Department, and because of our responsibility to older employees, and as you were employed by request of the San Joaquin Division and given employment here until such time that the San Joaquin Division offered you employment, and as we are advised that you refused employment on Wednesday, August 31, 1949, at the San Joaquin Division, we find it necessary to terminate you as of this date.

Yours very truly,

FIBREBOARD
PRODUCTS, INC.,
Antioch Division,

/s/ WM. VAN VOORHIS,
Plant Engineer.

W.VanVoorhis:MJ

CC: Int.Brotherhood Pulp, Sulphite & Papermill
Workers, Local 249.

Attn: Mr. Renold Victor
Mr. George Coalter

[Endorsed]: Filed October 11, 1950.

Q. When did you read that letter?

A. I didn't read it until after I left the plant.

Q. When was that? When did you leave?

A. September 2nd. The afternoon of September 2nd.

(Testimony of Willie Henry Townsend.)

Q. Did you do anything about that letter?

A. Yes, sir.

Q. What did you do?

A. On Saturday morning, September 3rd, I got the secretary of the local, George Colter, also a member of the shop committee, and went to Mr. Claude Stitt's office, at the San Joaquin Division of Fibreboard.

Q. What date was that?

A. September 3rd, on a Saturday morning, between ten and eleven o'clock.

Q. Yes. What happened? [30]

A. Well, I asked to see Mr. Stitt, and he told George and myself to come in. So we walked in. I told Mr. Claude that Mr. Lindley had told me the Sunday previous, on August 28th, that there would be no employment for me at the San Joaquin Division due to rumors.

Q. Just a minute. You had seen Mr. Lindley prior to September 2nd?

A. I called Mr. Lindley on the phone on a Thursday night, August 18th, and asked him when—on August 25th, it was, on Thursday, August 25th, and asked—told him that I had been waiting approximately ten months for that recovery operator's job that had been promised me. And he said, "Well, Townsend, well," he says, "I have been hearing a lot of stories about you." I said, "Wait a minute; that is exactly what you have probably been hearing, stories." He says, "Where are you?" I says, "I am at the San Joaquin plant working

(Testimony of Willie Henry Townsend.)

for Mr. Wolcott." He says, "How about meeting me in my office Saturday?" I said, "All right, sir, I will be glad to. What time?" He says, "Nine o'clock."

Q. What day was that?

A. That would be the 27th day of August on a Saturday.

Q. That he wanted to meet you?

A. He wanted to see me at his office at the San Joaquin Division. So I told Mr. Lindley that I would be there on a Saturday. I told Mr. Wolcott on a Friday that Mr. Lindley had [31] told me he wanted to see me at the San Joaquin plant; that he had been hearing a lot of stories about me, and I told Mr. Wolcott—I can remember the words—that "the way he talked, it looks like he was going to give me the gate before they ever opened up the plant. Mr. Wolcott said, "Well, Alabam"—that is what they called me at the old mill—he said, "Well, Alabam, if you get the gate out there, when you come back down here you will not be able to get a job here, because you was put here by the San Joaquin Division." I says, "Well," I says, "I know I haven't done anything to cause me to get the gate down there." He says, "No, but I know they will."

Q. Who said that?

A. Both Mr. Wolcott and Mr. Van Voorhis.

Q. Who is Mr. Wolcott?

A. He is a master mechanic at the Antioch mill.

Mr. Holmes: I move to strike that portion of the answer pertaining to the various conversations

(Testimony of Willie Henry Townsend.)

about what would happen to him or what might happen to him. [32]

* * *

The Court: Overruled.

The Witness: So Mr. Wolcott says, "OK, Alabama," he says, "if you get fired out there, you will get the gate down here, too."

Q. (By Mr. Garry): On what day was that?

A. This was Friday, the 26th day of August, 1946.

Q. Was this after the conversation you had had with Mr. Lindley?

A. I had a conversation with Mr. Lindley over the telephone Thursday night, August 25th.

Q. He told you to meet him at nine o'clock on Saturday, the 27th of August?

A. So I said, "Well, I'm sorry, Mister; I'm sorry, I'm just a poor boy trying to do the best I can." I said, "If you let me out, there is no hard feelings." So on a Saturday—on a Friday afternoon, then that said afternoon, then Mr. Wolcott came in and said, "I want you to work extra with the pipefitter; that will be time and a half." I called Mr. Lindley again Friday night and I told him I had a chance to make time and a half at the Antioch mill, how about making some other date? He said, "OK, make it Sunday."

"OK; I'll be there." On Sunday morning, the 28th of August, I met Mr. Lindley, and he said, "Let's go in Mr. McCuish's office." Mr. McCuish is the personnel manager of [33] Fibreboard. So

(Testimony of Willie Henry Townsend.)

we walked in Mr. McCuish's office, and he said, "Townsend, due to rumors I have heard about you, there will be no job for you at the San Joaquin Division of Fibreboard Products." I said, "I'm sorry, Mr. Lindley." I said, "You wouldn't know who stated those rumors, would you?"

"No, all I can tell you is there will be no employment."

"You don't realize it, Mr. Lindley, but you are pushing me out of this job here and also the job at the Antioch Division." He said, "Why?" I said, "Wolcott told me yesterday that if I didn't have no job here I wouldn't have one down there when I came back." He said, "Have you got no other job you can go to, Townsend?" I said, "No." He says, "Wait a minute, I got a good friend, superintendent of a paper mill in Springville, Oregon. When you get back home you call him on the telephone and tell him as a personal favor I want him to give you a job." So when I got home I called the gentleman and told him what Mr. Lindley said. He said, "How come you ain't going to work for Mr. Lindley?" I said, "I don't know; Mr. Lindley said he was letting me go on account of rumors. He has got the right to believe anything he likes." [34]

The Court: Just a moment.

Mr. Holmes: I move that the latter part of his answer go out.

The Court: The conversation that took place between him and the man in Oregon should go out.

(Testimony of Willie Henry Townsend.)

Q. Let me ask you a question; we can get along better that way. This was on the 28th day of August, 1948? [35] A. 1949.

Q. 1949? A. Yes.

Q. That Mr. Lindley had this conversation with you in the personnel manager's office?

A. That's right.

Q. He told you he wasn't going to put you to work? A. Yes.

Q. When the new plant opened up, is that correct? A. That's right.

Q. Did any other conversation take place with Mr. Lindley that day?

A. I shook hands with him and told him there was no hard feelings and any time I could be of any assistance to him I would be glad to help him in any way I could; that I would have to stay in Antioch because I didn't have no money to get out of there; I would probably be around for quite a while.

Q. Then what happened?

A. I went back to the Antioch mill on Monday.

Q. That would be August 29?

A. That's right. I told Mr. Wolcott ever I says—I explained to him what had happened. He said, "I will go and see Mr. Van Voorhis." He went and saw Mr. Van Voorhis. And anyway, a few minutes later he told me to come back. He said to work with George Machado, pipefitter. "It looks like you are going to be [36] able to stay on here." I told him, "That suits me, a day-time job. I have

(Testimony of Willie Henry Townsend.)

been working nights the last twenty years. I hope I stay here." Everything was lovely. And then I worked Monday, and Tuesday, and on Wednesday they asked me to go to the—about ten minutes to twelve Mr. Wolcott came to me and he said, "Townsend," he says, "I don't know what they want down there, but they want to see you at the San Joaquin Division at five minutes to one this afternoon."

Q. That would be August 31?

A. That's right. He says, "I don't know what they want down there. You will have to go to lunch now, and when you go and get your lunch, eat your lunch and go up to the San Joaquin Division and report to Mr. McCuish, the personnel man."

Q. So we will get this straight, the pulp work you were working in is at Antioch?

A. Yes, sir.

Q. And where is this so-called San Joaquin Division? A. It is in Antioch.

Q. Is it a different location?

A. About two and a half miles away.

Q. They are both fibreboard mills, is that correct? A. Yes.

Q. Go ahead with your story.

A. So I went and ate my lunch, went back and punched my card at 12:35, and drove out to the San Joaquin plant, and I got to [37] the San Joaquin plant about 20 minutes to one. About ten minutes to one Mr. Bob Fuller, the mill superintendent, came by. I was sitting by the clock where you punch in. So when he came by, he said, "How are

(Testimony of Willie Henry Townsend.)

you making out?" I says, "OK, Mr. Bob." One o'clock came, and Mr. McCuish didn't show up. I asked his secretary, "Mr. Wolcott told me to report back when I got through." She said, "Mr. McCuish just called me. He said he will be about ten minutes late getting back." Mr. McCuish, "Mr. Fuller wants to see you." I says, "There is something funny. Mr. Fuller just passed me about forty minutes ago."

She says, "He wants to see you over there in the paper mill." I said, "All right, I will go over there," and I saw him and Mr. Woods talking. I waited, and when they got done Mr. Bob Fuller said, "Townsend, I got a job for you." I says, "What is that? You know I am a pulp mill man. I have never worked in a paper mill. You know a man works in the pulp mill for twenty years he can't do much else." I says, "What kind of a job?"

"Operating a broke baler." I says, "Wait a minute, Mr. Bob. You didn't know that Mr. Lindley told me last Sunday that there would be no employment for me at the San Joaquin Division of Fibreboard?" He said, "No, did he tell you that?" I said, "Yes, he told me that last Sunday morning." He said, "That makes a difference there. They told me you didn't want a job." [38] I said, "Mr. Bob, I am getting \$1.54 an hour and working overtime, and this broke baler is \$1.42 an hour with no overtime." He says, "If you are working—they told me you wasn't working. Also I didn't know Mr. Lindley told you there would be no employ-

(Testimony of Willie Henry Townsend.)

ment." I said, "That's right. Under them conditions, will you give the job to somebody else? This fellow Fisher has been staying here since February 10."

Q. In other words Mr. Fuller at that time on Wednesday, August 31—— A. Yes.

Q. Told you that in this paper mill he would give you a job as broke millwork?

A. Broke bale operator.

Q. Broke bale operator? A. Yes, sir.

Q. At \$1.42? A. \$1.42½.

Q. \$1.42½ an hour? A. Yes.

Q. You were already earning——

A. \$1.54.

Q. With overtime? A. Yes, sir.

Q. Time and a half overtime, is that correct?

A. Yes, that is correct. [39]

Q. Did you have any further conversations with the defendants that day? A. Yes, sir.

Q. When was that?

A. When I came out—when Mr. Bob told me that there was a misinterpretation; that he had been told I didn't have no job; he says, "I don't blame you; I wouldn't quit a \$1.54 job to go to work at \$1.42½. Under them conditions I will give somebody else the job." I asked him how about giving it to this George Fisher, that he had been staying around since February looking for a job.

Q. Let us limit ourselves to matters concerning you.

A. When I came out of the plant I went in the

(Testimony of Willie Henry Townsend.)

office and told Mr. McCuish that I was going to send Fisher up for that job. Mr. McCuish said, "Well, I don't know. I guess somebody told you some of the things that were said about you." I said, "Yes, they have, if you want to know."

Q. This is Mr. McCuish? A. That's right.

Q. What does he do?

A. He is the personnel manager of the San Joaquin Division.

Q. Go ahead.

A. So I went back to the old Antioch mill. I arrived there at five minutes to three. When I went in I saw Mr. Van Voorhis and I said, "Gentlemen, I have wasted two hours of somebody's [40] time." I said, "I have been out there on a wild-goose chase. When I punch my card this afternoon at five o'clock do I put down six hours or eight hours? I don't want any question come up anyway because there is enough stories and rumors going around about me; I don't know what it is all about, but I want to keep the record clear. I haven't did any mechanical labor since twelve o'clock. When I make out my time card do I put down eight hours or six hours?"

Mr. Wolcott then told Mr. Voorhis, "Mr. Van Voorhis," he said, "I think he ought to put down eight hours."

Mr. Van Voorhis said, "OK, you put down eight hours." I said, "Thank you." I went back to work. That was Wednesday. I worked Wednesday, Thursday and Friday, and Friday they called me in and told me I was washed up.

(Testimony of Willie Henry Townsend.)

Q. That was when you got that letter, Exhibit 4, I believe? A. That's right, on September 2.

Q. Prior to this time, Mr. Townsend, did you have any discussion with any of the defendants in reference to your transportation fare?

A. On August 14 I was sweeping up, working as a janitor; I had been sent out from Antioch on a seven-day assignment as janitor and cleanup man, and I was sweeping up in the machine room.

Q. At the San Joaquin plant?

A. San Joaquin plant. And I asked Claude Stitt when I could expect my transportation. He told me, "It won't be long you [41] will be operating that recovery machine over there. I can't pay you your transportation until you go to work for the San Joaquin plant. You haven't worked for us yet." I said, "OK, that is fine."

Q. Mr. Stitt is the gentleman who wrote you on September 1? A. Yes.

Q. In the letter dated September 1, 1948?

A. Yes.

Q. At Tuscaloosa? A. Alabama.

Q. Alabama, is that correct?

A. That is correct.

Q. This conversation you had was August 14, 1949? A. On a Sunday, yes, sir.

Q. And he told you that your transportation would be paid?

A. I couldn't get it until I went to work for the San Joaquin Division.

Q. In the recovery room?

(Testimony of Willie Henry Townsend.)

A. That's right.

Q. And they hadn't opened up?

A. Yes, sir.

Q. He told you that? A. Yes, sir.

Q. Now, after you received this letter on September 2, what if anything did you do with the defendants? Did you have any [42] further conversation with them?

A. I went to see Mr. Smith on Saturday, September 3.

Q. What happened then?

A. George Colter, one of the members of the shop committee from the Antioch mill, went with me, and I told Mr. Stitt, I says, "Mr. Clark, it looks like they are pushing me around here for no reason at all. I don't know what it is all about." I had lost out in the Antioch and the San Joaquin Division. He says, "What happened?" I says, "Mr. Lindley told me last Sunday there would be no employment here; then yesterday afternoon I was let out from the Antioch mill." And Mr. Stitt said, "Well, Mr. Lindley didn't have authority to tell you that you wouldn't have no employment here." I said, "Nevertheless, he did tell me that."

Q. This was on the third day of September?

A. Yes, sir.

Q. That Mr. Stitt told you that?

A. In Mr. Stitt's office, yes, sir. So he said, "Mr.—and Mr. Fuller are on an appeal committee." I said, "Do you mind if I appeal to those gentlemen, and let us clear this thing up so that I

(Testimony of Willie Henry Townsend.)

can exonerate myself? Mr. Lindley will tell you that he said there will be no employment for me due to rumor. I was working this last week at Antioch, and I was let go this week." I said, "Now then, I have got busted out; I ain't got no job; I am a long ways from home; I would like to [43] get squared up. If you can give me any assistance—" He says, "Them fellows are too busy; I ain't got time to talk to you." I says, "Sometime later?" "I will be glad to talk to the men," he said, "and maybe we can get together sometime later." I said, "OK." That was approximately the conversation.

Q. Did you discuss with him about going to work in the recovery department?

A. Not that day.

Q. He just told you that Lindley had no authority to fire you?

A. He told me Mr. Lindley—he said he didn't have that much authority.

Q. Did you tell him to put you to work?

A. I told him I wanted to work somewhere; he said he was busy; he didn't have time to take the case up now, but later. I said, "OK; see you later."

Q. What further happened?

A. Next time I saw Mr. Stitt on a Sunday on or about—it must have been about the 11th of September on a Sunday. But in the meantime I had gotten me a job with the Southern Pacific Railroad as master mechanic to come to Roseville Monday morning. So before I left I went up to Mr. Stitt's

(Testimony of Willie Henry Townsend.)

home on Sunday afternoon about one o'clock in his living room, and we discussed my history, you might say, in the pulp field and different things, and I left them that afternoon at five minutes to [44] four and caught the bus and went to Roseville, went to work for the Southern Pacific Railroad. The master mechanic sent me down to Sacramento in a month and a half and I worked as a boilermaker's helper in the roundhouse.

Q. Before we go into that phase of it, you say you saw Mr. Stitt?

A. I saw him on the 11th, Sunday, the 11th of September.

Q. What was that conversation?

A. I was just trying—general discussion where he had time to talk to me. On Saturday the third he didn't have time, so I went to his home.

Q. Did you discuss with him whether you were going to go to work at the recovery plant?

A. I discussed whether I was going to work in the pulp mill; I was assigned as a recovery operator because all my experience in the pulp industry was in that department and I had been told on the 15th of November, 1948, that that would be my assignment.

Q. Mr. Lindley told you that?

A. Yes, that's right. [45]

* * *

The Clerk: Plaintiff's Exhibit 5 in evidence.

The Court: It will be admitted as Plaintiff's Exhibit No. 5. Do you make an objection, counsel?

(Testimony of Willie Henry Townsend.)

Mr. Holmes: Yes, on materiality.

The Court: I will overrule the objection.

(The letter referred to was thereupon marked Plaintiff's [47] Exhibit No. 5.)

PLAINTIFF'S EXHIBIT No. 5

February 1, 1944

To Whom it may concern:

This will introduce to you W. H. Townsend, who has been continuously in the employ of The North Carolina Pulp Company for the past six and one-half years.

During construction Mr. Townsend acted as Foreman in the erection of power and recovery units; later assuming the duties of Recovery Plant Foreman and operating boilers using oil, coal and concentrated sulphate liquors as fuel.

During the past three years Mr. Townsend has served as Tour Foreman or General Foreman throughout the plant.

Throughout his period of employment with our Company Mr. Townsend has proved himself to be an efficient supervisor as well as a reliable, competent workman.

Yours truly,

S. M. RASMUSON,

Pulp Mill Supt., North

Carolina Pulp Company.

/s/ S. M. RASMUSON.

SMR/km

[Endorsed]: Filed October 11, 1950.

(Testimony of Willie Henry Townsend.)

Q. (By Mr. Garry): Mr. Townsend, at the noon recess I believe you testified that on your way to work on this railroad job that you had stopped to see Mr. Stitt at his home on a Sunday afternoon?

A. Yes, sir.

Q. On September 11, 1949? A. Yes, sir.

Q. I'm not sure you covered the conversation, but will you cover the conversation that is germane and pertinent to the lawsuit at hand?

A. Well, my reason for seeing Mr. Stitt that day was trying to clear up the records about my being a troublemaker or anything else. I told Mr. Stitt—I tried to be honest and tell him the truth; I had some stuff there—that recommendation, for one thing—and went over my history in the pulp industry and told him that I hoped sometime in the future that my case would be cleared up where I could come back to work, and I told him I was going to work for the S.P.; I had worked for the Southern Pacific before, I had a good record with them. And it was just a general discussion about my character and conduct and different places I had worked at and the type of work that I had did. It was mostly that. Mr. Stitt promised me that he would investigate my case, which he did, and later on I talked with him again on a trip home. I used to come in every week end [48] from Sacramento; I worked a five-day week. I think it was on about the 13th of October that I had a talk with Mr. Stitt, and he told me that as far as he was concerned my application for employment was active at the San

(Testimony of Willie Henry Townsend.)

Joaquin Division; that Mr. Lindley did not have the authority to tell me I couldn't work there and if I would contact Mr. McCuish. I called Mr. McCuish on the telephone.

Q. Just a minute, so that we will be able to follow this. You say this was on October 13?

A. On or about October 13, yes, sir, that I called Mr. McCuish.

Q. You talked with him after you talked with Mr. Stitt?

A. The next night, yes, I called Mr. McCuish after I had talked to Mr. Stitt.

Q. Where did you speak to Mr. Stitt?

A. In Antioch.

Q. Where?

A. At the mill, at the San Joaquin mill.

Q. By telephone? A. No, in person.

Q. Did you go to his office?

A. I went to his office.

Q. You spoke to him there? A. Yes, sir.

Q. What time of the day was that?

A. It was afternoon, around between two and three o'clock. [49]

Q. So you spoke to him, and what did he say to you?

A. He told me that as far as he was concerned, I was active; Mr. McCuish was up in Oregon, and he said as soon as Mr. McCuish came back from a convention of some kind, he would speak to him. And then I think it was on about the same day that I called Mr. McCuish from the Travelers Hotel

(Testimony of Willie Henry Townsend.)

on the telephone and told Mr. McCuish that Mr. Stitt said that I was eligible for work there; that I had had a talk with him, and I told Mr. Stitt all I wanted was just like they promised me, was a job, you know; I had my family out here and I liked Antioch, I liked California, I would like to stay there. So I told Mr. Stitt I was making \$1.42 and .6 an hour in Sacramento, but by the time I paid my expenses up there, my house rent and all in Antioch, I was actually making \$25 a week. So I told Mr. McCuish, and Mr. McCuish said that Mr. Stitt had told him that I was active; he said he didn't have any openings at the present time.

Q. But you spoke to Mr. Stitt in person in the afternoon? A. Yes.

Q. And he told you as far as he was concerned your employment was active?

A. That's right.

Q. He told you to talk to Mr. McCuish on a Sunday?

A. He said he would talk to Mr. McCuish.

Q. Did you ever talk to Mr. McCuish [50] yourself?

A. On the telephone from Sacramento, a few days later I called Mr. McCuish on the phone.

Q. Where was Mr. McCuish?

A. He was at his office at the mill, 1140 Antioch.

Q. In other words, several days after October 13th—you don't recall the date——

A. I don't recall the date.

Q. You spoke to Mr. McCuish regarding the

(Testimony of Willie Henry Townsend.)

conversation that you had had with Mr. Stitt on the 13th day of October, 1949; is that right?

A. Yes, sir.

Q. What was the conversation that you had?

A. Well, Mr. McCuish told me yes, that Mr. Stitt had saw him, but he said, "We don't have anything open right now, Townsend." He says, "I will keep you in mind." I said, "Thank you, sir."

Q. Was this after the recovery plant had opened?

A. It was along about the time that it was opening up. I was working in Sacramento. As I say, I don't recall the exact date, but the telephone record at the Travelers Hotel may give you the exact date.

Q. It was on the 14th, according to the answer of the defendants, that the recovery plant opened.

A. Well, I was working for the Southern Pacific at that time.

Q. It was a few days after that that you talked to Mr. McCuish? [51]

A. McCuish.

Q. He told you you were on the active list?

A. That's right.

Q. And that they didn't have anything open for you right now?

A. That's right.

Q. Did you ever have any further conversation or any communications with him?

A. No, sir. Oh, yes, every now and then I would see him when I could come on weekends; I always

(Testimony of Willie Henry Townsend.)

spoke; we have always been good friends; there ain't nobody fell out.

Q. Did you ever write to him?

A. Yes, I wrote Mr. Stitt a letter, and I also wrote the Antioch Division a letter, and I think that was around November; I don't remember the exact date—the 2nd of November or something like that.

Q. I show you here a letter dated November 2nd; is that a copy of the letter that you sent to Mr. Stitt?

A. Yes, sir, that is a copy of the letter that I sent.

* * *

PLAINTIFF'S EXHIBIT No. 6

Sacramento, California

November 2, 1949

Mr. Claude Stitt, Manager
Fibreboard Products, Inc.
San Joaquin Division
Antioch, California

Dear Sir:

In regards to letters I received from Fibreboard Products, Inc. in September and October, 1948, offering me employment in new pulp mill and employment in one of the company's other plants until such time as pulp mill began operation, I now request that I be given employment as promised or reason why I am not given employment.

(Testimony of Willie Henry Townsend.)

Hoping that we can reach a peaceful settlement in my case and avoid court procedure and anticipating an early reply, I beg to remain,

Respectfully yours,

W. H. TOWNSEND,
511 Third Street,
Antioch, California.

[Endorsed]: Filed October 11, 1950.

The Clerk: Plaintiff's Exhibit 6 in [52] evidence.

* * *

Q. Did you receive a reply from Mr. Stitt?

A. Yes, sir.

Q. In reply to that letter (handing paper to witness)? [53]

* * *

The Clerk: Plaintiff's Exhibit No. 7 in evidence.

PLAINTIFF'S EXHIBIT No. 7

Fibreboard Products Inc.
San Francisco

November 3, 1949

San Joaquin Division
P. O. Box CC
Antioch, California
Mr. W. H. Townsend,
511 Third Street,
Antioch, California.

Subject: Inquiry as to Employment

Dear Mr. Townsend:

Relative to your letter of November 2nd, our records show that you were offered employment at the San Joaquin Division on Wednesday, August 31, 1949, and that you saw fit to turn down the position offered.

Yours very truly,

FIBREBOARD PRODUCTS INC.
San Joaquin Division

/s/ C. M. STITT

C. M. Stitt

Plant Manager

CMS:ZR

[Endorsed]: Filed October 11, 1950.

Q. What if anything did you do when you received that letter from Mr. Stitt?

(Testimony of Willie Henry Townsend.)

A. After I received that letter from Mr. Stitt I came back to Antioch and I was told Mr. King, public relations officer, would meet with me on the 16th of November at the old Antioch mill to take my case up. And on the 16th of November I [54] met with Mr. Clyde King, public relations manager for Fibreboard Products Inc., and Mr. Van Voorhis back there, and the new manager at that time was at the Antioch mill and he also sat in on the case. It was after the 16th of November meeting that Mr. King told me to give him a couple of weeks, he would study the case and see what he would be able to do with it. So it was along in December that I was notified that they would take no further action, and that is when I went to see Mr. Curtwright, an attorney in Sacramento.

Q. And filed this suit? A. Yes, sir, I did.

Q. Since October 14, 1949, have you been employed at all?

A. Well, I was—I was working with the Southern Pacific Railroad on October 14, 1949, and I was laid off on February 7th when they cut reduction of forces at the roundhouse at Sacramento, and I was unemployed from February 7th, 1950, until August 8th, 1950. I didn't have any job of any kind other than I would—I lived next door to a funeral home, and if I would go with the ambulance or hearse and to pick up a body, I would make one dollar.

Q. You mean if you picked up a stiff you would get a dollar for picking it up? A. Yes.

(Testimony of Willie Henry Townsend.)

Q. How many of those have you picked up?

A. Three or four a month; I wouldn't always be lucky enough [55] to make the dollar. Sometimes when his nephew would be there he would go out and save that dollar, and I would have to wait until the nephew was away.

Q. How much did you earn at the Southern Pacific?

A. \$1.42 6/10ths, 40 hours a week.

Q. How much money have you received, do you know, since October 14, 1949?

A. We was paid twice a month; I got \$108 one time, and \$116 another; it ran from \$108—\$224 a month.

Q. How much did that amount to?

A. I worked with them five months—a little better; I made \$1,275.

Q. \$1,275? A. Yes.

Q. From the Southern Pacific, is that right?

A. I have got the exact amount right here in my pocket. Can you see that, Judge, on the bottom there?

* * *

The Court: This has a figure \$1,225.75.

The Witness: That is what I made during my service with the S. P. Sacramento division; that is railroad retirement pay. [56]

* * *

Q. What have you been doing since August?

A. Working at a service station for Mr. Bill Sullivan on Sixth and "B" Street.

(Testimony of Willie Henry Townsend.)

Q. What do earn there?

A. I get \$55 a week and work 60 hours a week.

Q. What is that—about ninety cents an hour?

A. Probably a little better than ninety cents.

Q. Say ninety-five? A. Yes, sir.

Q. How much have you earned since you have been there?

A. Well, I have worked regular since August 8th.

Q. And how much have you earned?

A. About \$420; it has been two months.

Mr. Holmes: That is a matter of mathematics, I think.

Q. (By Mr. Garry): Have you ever had a chance to talk to Mr. Stitt since your letter of November 2nd?

A. Oh, yes, I have talked to Mr. Stitt on several occasions, both he and also talked with Mr. Lindley.

Q. On the 3rd of September, 1949, when you saw Mr. Stitt, you testified this morning that he said that Lindley had no business firing you?

A. That's right. [59]

* * *

Q. When he told you he had no authority to fire you—is that correct? A. Yes, sir.

Q. Did you tell him that you had received a letter stating that you had refused a job on August 31, 1949?

A. I told him—told Mr. Stitt on the 3rd of September that I didn't refuse no job; I said Mr. Bob Fuller told me he had a job as broke baler, I could

(Testimony of Willie Henry Townsend.)

have it; that as soon as I told him Mr. Lindley had told me previous to that time there would be no employment coming he said there was a misconception; he said, "Under them conditions I will get somebody for the job." He says, "They told me you didn't have any job." I says, "I am working for Mr. Van Voorhis and Mr. Walcott making \$1.54 an hour. As far as I know, I can continue on."

Q. Did you talk that way to Mr. Stitt?

A. Yes. [60]

Q. On September 3rd? A. Yes, sir.

Q. You received a letter on November 3rd from Mr. Stitt pointing out to you, in response to your letter of November 2nd, "Our records show that you were offered employment at the San Joaquin Division on Wednesday, August 31, 1949, and that you saw fit to turn down the position offered." Did you talk to Mr. Stitt and tell him what they had offered? A. Yes, sir.

Q. What did you tell him?

A. I told him that Mr. Walcott told me on a Wednesday to report to Mr. McCuish's office at five minutes to one.

Q. Now you are not following me, Mr. Townsend. A. I am sorry.

Q. When you received that letter of November 3 from Mr. Stitt telling you that you had turned down a job on August 31st, did you ever talk to Mr. Stitt after that? A. Yes, sir.

Q. What did you tell him?

A. Well, I didn't go into the details about the

(Testimony of Willie Henry Townsend.)

answer to that letter, because I had already told him on the 3rd day of September that that wasn't so and asked him to bring Mr. Fuller and Mr. Lindley in from the plant into his office, and he refused to do so.

Q. On the 3rd day of September? [61]

A. That is correct.

Q. He refused to do that?

A. That is right.

Q. Then have you actually talked to him since November 3rd?

A. Yes, I have talked to him on several occasions, but I never mentioned that particular part of the situation. I have talked to him about getting an exoneration and going to work in a recovery department like I was promised. But Mr. Stitt since that time isn't manager now; he is in the engineering department out of the San Joaquin Division, and my case has been, you might say, in status quo since Mr.—

Q. Who was it that told you that? Who was it that referred this matter to Mr. King?

A. Well, I had one—when I was first discharged at the Antioch mill I called Mr. King. I tried to take up after I talked to Mr. Stitt and he wouldn't do anything. I tried to take it up with him trying to settle it in an amicable way and win an exoneration for myself, because I had been accused. They said I was being let out due to rumors, and I was making an honest effort to find out what the rumors

(Testimony of Willie Henry Townsend.)

were, because I have always tried to treat other people like I would be treated myself.

Q. Who told you you were being let out for rumors? A. Mr. Lindley.

Q. When did he tell you that? [62]

* * *

A. It was Sunday, August 28th.

Q. Sunday, August 28th?

A. At the same time he also asked me why I wrote a banker in Plymouth. And I said, "Mr. Lindley, I wrote that banker because you told me over the telephone that you were hearing a lot of stories about me, and I was just writing that banker in Plymouth, North Carolina, to let Mr. Stitt and you know what my character was the nine years I lived in Plymouth, North Carolina, both myself and my family."

Q. Mr. Stitt never told you that they didn't want you because of any—— A. He never——

Q. Just wait until I finish my question, Mr. Townsend. Mr. Stitt never told you that they were letting you out, didn't want you, because of rumors?

A. No, sir. [63]

Q. Mr. Stitt never told you at any time that they didn't want you, except this communication you received on November 3? A. That is right.

* * *

(Testimony of Willie Henry Townsend.)

Cross-Examination

By Mr. Holmes:

Q. Mr. Townsend, you worked for a pulp mill from about 1928 to 1935, didn't you?

A. Yes, sir.

Q. What was that mill?

A. Gulf States Paper Company, Tuscaloosa, Alabama.

Q. Then there was some difficulty at the time you left, was there not, some dispute between you and your employer?

A. No, sir, not between me and my employer, no, sir.

Q. You left there?

A. A man told me to kiss his ass, and I knocked him down. Where I come from, they don't kiss asses.

Q. You left the job hurriedly? [64]

A. No, sir, I didn't leave the job in a hurry. I stayed there and finished out my shift, then I quit.

Q. You had had some fight on the job with that man?

A. There was no fight, I just knocked the man down. He never did get up or there would have been a fight. It takes two people to fight; there wasn't but one.

Q. Then for a couple of years you drove taxicabs, didn't you? A. That's right.

Q. Before you went into a pulp mill again?

(Testimony of Willie Henry Townsend.)

A. I went with the North Carolina Pulp in 1937.

Q. You drove taxicabs for a couple of years, though, did you? A. Yes.

Q. Between the two pulp mill jobs, is that right?

A. I drove taxicabs and worked on the river, yes.

Q. Then you went to work for the North Carolina Pulp and Paper Company from about June, 1937, until about—— A. April 14——

Q. April, 1945? A. April, 14, 1945.

Q. And then there was some difficulty between you and your employer at that time and you left; isn't that true?

A. I organized the salaried foremen, and I was called in and told that my services was ended.

Q. There was some little dispute between you and your employer and then you left? [65]

A. I was let out for organizing the salaried foremen, the first group of salaried foremen ever organized in the paper industry.

Q. Then from April, 1945, on you didn't work in a pulp mill any more at all?

A. I worked almost two years of that time as field representative of the pulp and paper mill union.

Q. You worked for two or three unions in that period, didn't you?

A. Yes, sir, but they was all representing the paper industry.

(Testimony of Willie Henry Townsend.)

Q. Then you worked for a couple of railroads, didn't you?

A. Burlington and Southern Pacific.

Q. And you also drove cab for a while during that period, didn't you? A. That's right.

Q. And you had eight or ten jobs between 1945 and 1948, didn't you?

A. I about six, yes, sir.

Q. You had two railroad jobs, three union jobs—that is five—and how many cab jobs did you have? A. One.

Q. Did you have any other jobs during that period? A. Otis Elevator.

Q. Otis Elevator?

A. Bagbee Elevator and Electric. [66]

Q. Bagbee Elevator and Electric. That makes seven or eight jobs, is that right, during that period?

A. That is right.

Q. And you had not been in a pulp mill as a worker since the early spring of 1945, is that true?

A. Since 1940 as a worker; I was foreman from 1940 to 1945.

Q. You had been there as a foreman up to April 14, 1945? A. That is right.

Q. After that you weren't in a pulp mill at all working? A. No, sir.

Q. Then you got a job with this elevator company in the month of August, 1948?

A. That's right; I quit Bagbee and went over to it.

(Testimony of Willie Henry Townsend.)

Q. And that was to help install about three elevators, wasn't it?

A. Well, I helped install three elevators with them.

Q. Yes; but you were employed——

A. If I hadn't come off there, I would probably still be helping them; maybe I may have been suspended.

Q. What were the terms of your employment with Otis Elevator?

A. \$1.58½ an hour and full time for all over-time.

Q. Was there any guaranty as to how long you would work?

A. The man I was working with had been with them eight years, and he said I could work with him right along.

Q. He, however, came from another state? [67]

A. He was from North Carolina.

Q. He came to install three elevators?

A. He goes all over.

Q. He was sent down to install an elevator at the university and one at the hospital?

A. Two at the hospital, and at the president's home at the University of Alabama.

Q. That job was just about completed when you left Alabama, wasn't it?

A. Yes, sir, but he went on another one.

Q. In Tuscaloosa?

A. No, sir, I think the next one was in North Carolina.

(Testimony of Willie Henry Townsend.)

Q. Then the job at Tuscaloosa, Alabama, was just about up, wasn't it? A. That's right.

Q. In addition to these other letters which you have identified that were written in 1948 you wrote this letter of September 7th, didn't you?

A. That's right; I wrote that from Tuscaloosa, Alabama.

Q. And you filled out an application blank and sent it with this letter? A. Yes, sir.

Q. Is this the application blank (showing)?

A. That's right, that's right. [68]

* * *

The Clerk: Defendant's Exhibit A in evidence.

DEFENDANT'S EXHIBIT A

Tuscaloosa, Ala.

Sept. 7, 1948

Mr. C. M. Stitt,
Plant Manager,
Fibreboard Products, Inc.,
Antioch, Cal.

Dear Sir:

Have just rec'd your letter of Sept. 1st with application blank. Appreciate your letter very much and hope to have the pleasure of meeting personally with both you and Mr. T. Lindley, your pulp mill supt., in the near future. Saying again to you both that I will appreciate any job you people have to offer me and assure you that you will have a steady worker and one that will be with you for many years

(Testimony of Willie Henry Townsend.)

to come. Will close with best regards and hoping to hear from you people again in the near future. I can report for work on one week's notice.

Yours truly,

W. H. TOWNSEND,
Apt. 23A Druid Gardens,
Tuscaloosa, Ala.

Received September 10, 1948.

[Endorsed]: Filed October 11, 1950.

Q. (By Mr. Holmes): This is your signature on this application blank, isn't it?

A. Yes, sir.

Mr. Holmes: I will offer next the application blank [69] dated September 7, 1948, signed W. H. Townsend.

Q. With respect to this application blank, Mr. Townsend, there is a line that asks "Were you ever asked to resign?" And the word "No" written in there. Did you write that in there?

A. I was never asked to resign.

Q. Did you write in the word "No"?

A. That is right.

* * *

Q. (By Mr. Holmes): On the reverse side of this application blank under "Previous employments" it lists some of your previous employers, does it not? A. That's right.

(Testimony of Willie Henry Townsend.)

Q. Those are some of the employers that you have already mentioned in your testimony, is that right? A. Yes, sir.

Mr. Holmes: I will offer this application blank. There are some matters on it which I think Mr. Townsend didn't put on. For instance, the shorthand at the top of the page; you didn't put that on? [70] A. No, sir; I can't write shorthand.

Q. And the red mark under "Recovery room"?

A. No.

Q. And the matters in pencil on the reverse side which have been crossed out; you didn't write those on, did you? A. No, sir, I didn't.

* * *

The Clerk: Defendant's exhibit B in evidence.

DEFENDANT'S EXHIBIT

EMPLOYMENT DEPARTMENT

FIBREBOARD PRODUCTS INC.

Approved by

Division

Emp. begins

Department

Position

No. 24149 Application Blank

Exhibit No. B

SEP 11 1948

Filed OCT 14 1950

C. W. Calbreath, Clerk

C. M. S.

By Louis W. McDonald
Deputy Clerk

Date Sept. 7 - 1948

Full Name Willie Hugh Townsend Telephone Number

Social Security No. 422-03-9553

Address: Street and No. apt. 23 A Druid Gardens City and State: Tuscaloosa Ala.

Where were you born: Tuscaloosa Ala. Date of birth: July 7 - 1900

Age: 48 Sex: male Nationality: American Height: 5ft 8-0 Weight: 155

Kind of work desired: Pulp mill iron foreman How much experience have you had in this work? Five years

What other lines of work does your experience include? 12 years as Recovery Room Foreman and Recovery Boiler operator.

Are you married or single? Married Divorced? _____ Widow? _____ Widower? _____

How many depend on you for support? Four What salary would you be willing to accept? Co. Rate of Pay for any

State number of children, if any, and ages: Three daughters ages 15-17-19 years

Do you live with your parents? _____ Relatives? _____ Keep house? yes Board? _____ Self-supporting? _____

Were you ever asked to resign? no If so, for what cause?

Are you employed at present? yes Employer's name and address: Otis Elevator Co. N.Y. City N.Y.

Present salary: \$143 per mo Why do you wish to change? Wish to Return to Kraft Pulp mill

Why do you desire to work for the Fibreboard Products Inc.: having helped in the construction and starting productions in two Kraft Pulp mills I believe I would give a nice opportunity with you people in your new mill also like working at mill.

If you have previously been employed by the Fibreboard Products Inc., or its subsidiaries, give dates and position held

How far did you go through school? Eighth Grade Date of leaving school May 1914

Give name and locations of schools or colleges from which you graduated Stafford School.
Tuscaloosa Ala

What educational courses are you now taking, if any?

Applicant's signature W. H. Townsend,

(OVER)

PREVIOUS EMPLOYMENT

Month	Year	Name of Employer	In what Department did you work	What position did you hold	Why did you leave	Salary
From June 6	1928	Gulf States Paper Co.	Recovering Dept	Emp't. master & Rec. operator	to seek better job	50¢
To July 15	1936	Tuscaloosa Ala	Under whom Mr Joe Richardson	Gen. Supt		35¢
From Aug 29 th	1937	N.C. Pulp Co	Recovery & Pulp mill General	Recovering Foreman & General Foreman of Production		
To Oct 14	1945	Plymouth N.C	Under whom Mr L. M. Rasmussen	Supt.	for R.R. job	35¢
From Nov 13	1945	Burlington R. R	Transportation	Locomotive Fireman	Due to living conditions for family	7 mi app. 4.00
To Sept 30	1945	Lincoln Neb.	S.E. Paridie		for job in Mexico	250 + 4¢
From Aug 1 st	1946	Pulp Sulphite & Paper mill	Under whom	Field Rep.		
To Oct 11	1947	H. Edward. N.Y	Under whom Mr John P. Burke			

References—Do not give relatives or former employers

Include anyone you know who is employed by Fibreboard Products Inc.

Name	Occupation	Street Address	City and State
Mr Luther Davis	President of City Commission		Tuscaloosa Ala
Mr H.E. Beam	Bank Cashier	Branch Bank & Trust Co	Plymouth N.C
Mr Chester Walker	Probate Judge		Tuscaloosa Ala
Mr Archie Spain	Engineer	Southern Pacific R.R	Gila Bend Arizona

Remarks:—(This space reserved for Employment Manager)

[Handwritten notes and signatures, including dates like 12-20-48]

Rec'd and Sep 10, 1948.
[En closed]: Filed October 11, 1950.

(Testimony of Willie Henry Townsend.)

Q. (By Mr. Holmes): At the time you talked to Mr. Lindley in your first telephone conversation when you called him from Tuscaloosa, Alabama, on Tuesday, October 18th, was there anything said about the length of time you would be employed?

A. Yes, sir.

Q. What was said?

A. I wanted to know if I could depend on it to be a permanent job.

Q. And what did he say?

A. He said yes. [71]

Q. Now, at the time this action was filed you verified a complaint, didn't you? I show you a copy of the first complaint that was filed in this case; it indicates that it was sworn to by you; isn't that right?

A. Yes, sir.

Q. And in the third paragraph of that complaint—

Mr. Garry: Just a minute, counsel. What are you referring to now?

Mr. Holmes: The third paragraph of the original complaint, on lines 11 and 12: "that the defendant should employ this plaintiff as such recovery operator for an indefinite time"—lines 11 and 12.

A. There was nothing said about recovery operator until the 15th of November when I arrived at the San Joaquin plant.

* * *

The Court: Counsel has a right to conduct [72]

(Testimony of Willie Henry Townsend.)

his cross-examination. The thing counsel wants to know if you verified that complaint.

A. I verified the complaint, yes, sir, but——

The Court: That is argument, Mr. Townsend, and your counsel is competent to make it.

Q. (By Mr. Holmes): When did Mr. Lindley say anything to you about the job as recovery operator? A. On the 15th of November.

Q. He didn't say anything about the recovery operator's job in your telephone conversation?

A. No, sir; he told me Mr. Stitt had given him my recommendation from the North Carolina Pulp Company and my application for employment and it seemed I was an experienced Kraft pulp mill man.

Q. He didn't promise you any particular job at all? A. That's right.

Q. You didn't know what it would be?

A. Presumably it would be a tour foreman's job. That was the last job I had.

Q. Which was what you applied for?

A. Yes, sir.

Q. That is what you wanted?

A. That is what I wanted.

Q. He didn't promise you that or any other job on October 18th? [73]

A. No, sir; he just told me if I would come down they would place me in one of the other mills until such time, and that I could work in that until it was open, and I could stay here and the com-

(Testimony of Willie Henry Townsend.)

pany would help me buy a home if I wasn't able to buy one.

Q. After that you did come out and did take a temporary job in that other mill?

A. Yes, on his promise, he told me——

Q. You did work temporarily in the other mill, and you understood that you would be employed there until a place was found for you in the San Joaquin Division; is that your understanding?

A. Yes.

Q. Then when a position was offered you in the San Joaquin Division you turned it down because you said you already had a position?

A. There has been no position offered at the San Joaquin other than as I have said, Mr. Bob says, "I have got a job on the broke baler." I said, "Mr. Bob, I am working for Mr. Van Voorhis and Mr. Wolcott for \$1.54." He says, "They told me you wasn't working at all." Mr. Bob Fuller withdrew the offer as soon as I told him the truth about it.

Q. Now, in the first amended complaint, paragraph 3 on lines 13 and 14, it reads:

"that the defendants should employ this plaintiff as such recovery operator for so long as plaintiff [74] should be desired to be so employed and for so long as plaintiff's work should be satisfactory."

A. That's right.

Q. Did you understand that to be the terms of your employment?

(Testimony of Willie Henry Townsend.)

A. Well, that is, most companies have that policy, as long as a man's work is satisfactory his employment continues, and when a worker's work gets unsatisfactory, they are generally called in on the carpet and either laid off or reprimanded.

Q. But the other part of it, that you could work as long as you desired to be employed; is that your understanding of the contract also?

A. Well, I was told that I would have a recovery operator's job, and I knew if I went to work as a recovery operator I had to produce in order to remain on the job. [75]

* * *

The Court: Would you read it again?

(The reporter read the question.)

A. Yes, sir.

The Court: Now, if you have any explanation you want to make to that, go ahead.

A. Well, when I say "Yes, sir" I figured I would work—I never missed a day's work in my experience in the pulp mill. My record with the other people would show I was on the job with the Gulf States Paper Company from 1928 to 1936 and from June, 1937, to April, 1945, with the North Carolina Pulp Company, and never missed one day. I told Mr. Stitt in my application for employment out here that I had a wife and three daughters; I was seeking permanent employment. I told Mr. Lindley when I talked with him on the 18th of October that I appreciated hearing from Mr.

(Testimony of Willie Henry Townsend.)

Stitt, and I would appreciate very much coming to California to work with those people; that Mr. Stitt had told me that he would be on the job; however, before making actual commitments. He said, "Mr. Stitt, give me the application." He said, "I got your copy of recommendation from the North Carolina Pulp Company." He said, "You seem like you are capable or like you are the kind of man we are looking for. We can put you on temporarily in one of our other plants until the pulp mill is open. We expect to be going some time around—— [76]

Q. When was this said to you?

A. That was in the telephone conversation the 18th of October.

Q. But you understood that you could quit the job any time you wanted to?

A. Well, in America we can all do that, yes, sir.

Q. You weren't bound for any particular length of time, were you?

A. No, sir, I never did go to work out there.

Q. I am talking about your understanding of the contract you had. You understood, Mr. Townsend, if you went to work pursuant to this what you believed to be a contract, you could quit any time you wanted; isn't that true?

A. That is true.

Q. And you weren't bound to work for any particular length of time even if you did take the work; isn't that right?

A. That is true, yes.

(Testimony of Willie Henry Townsend.)

Q. When was the first time you talked to anybody about transportation money?

A. The 14th of August, 1949.

Q. You didn't talk to anybody about it before that?

A. No, sir.

Q. The subject hadn't been mentioned before that?

A. Nothing, only on the telephone conversation Mr. Lindley [77] asked me if I had enough money to get out here, I told him yes, sir. He said it would be refunded.

Q. Between that instance and October 14th there was never any mention of it, is that right?

A. Never mentioned, no, sir.

Q. The only person you talked to then after you came to California was Mr. Stitt, with respect to this subject?

A. That is correct.

Q. Is that right?

A. Yes.

Q. And in the course of your telephone conversation with Mr. Lindley you say he mentioned that he had your application?

A. Yes, sir.

Q. Did he mention any of the references on that application?

A. No, sir.

Q. Do you remember him telling you that the company investigated people before it hired them?

A. No, sir.

Q. Do you remember him telling you that he had many applications and that he would, in the course of his work, investigate you and the others also?

A. No, sir.

Q. And do you remember him telling you that

(Testimony of Willie Henry Townsend.)

he had to choose the men for his crew on the basis of their qualifications? A. No, sir. [78]

Q. Do you remember him telling you that he would determine the qualifications of men by their work history or by recommendations or by investigation through previous employers?

A. He said that the recommendation that he had there seemed to show that I was a capable Kraft pulp mill man. He made that remark.

Q. Did he say anything about investigating with other employers? A. No, sir.

Q. You don't remember anything of that sort at all? A. No, sir.

Q. Is that right? A. No, sir.

Q. Why did you tell him you were going to arrive on the 15th of November?

A. Because I had quit my job on the 7th; I had told Mr. Utey the 7th would be my last day, and I figured arriving there on the 14th of November. I was going to leave the 8th or 9th.

Q. You had made those arrangements before you talked to Mr. Lindley, is that right?

A. I made those arrangements after the telephone conversation with Mr. Lindley, I quit my job.

Q. Just a minute; I don't think you understood the question. You testified that you told Mr. Lindley that you would be in California on the 15th of November. [79] A. That's right, yes.

Q. Why did you tell him you would get there on that day?

A. Because I was going to work out a notice.

(Testimony of Willie Henry Townsend.)

Q. You were just going to leave a job, is that right?

A. No, I wasn't going to leave the man without another man to help him.

Q. You weren't going to come until you got someone to replace you?

A. That was approximately from the 18th of October to the 15th of November.

Q. But you left——

A. The 9th of November I left Tuscaloosa, Alabama at 6:45.

Q. I want to know what the significance was of your telling him you would be here on November 15th.

A. Knowing that that is the last day of the first half of the month, if they pay off then, if I was there on the 15th and went to work I would get in half a month's pay with Fibreboard in the month of November, 1948.

Q. That was the only reason you told him you would be there on the 15th?

A. That was the only reason, with the exception when you are moving to a new place, if a man gets there he has got to find a suitable place for his family to live; you must have a chance to pick out a home and a place to stay; you try to get about eight hours' sleep so you can do eight hour's honest [80] work.

Q. Was this conversation you had with Mr. Lindley after you arrived in California—you had

(Testimony of Willie Henry Townsend.)

two conversations, didn't you, within a very short time?

A. I had a conversation on the 15th day of November.

Q. Then you talked to him again a day or two later, did you?

A. I talked with Mr.—I talked with Mr. McCuish. He is the man that told me to go down to the Antioch division of the Fibreboard and report to the personnel man, Mr. Boyd.

Q. That isn't answering my question. I want to know if you talked to Mr. Lindley twice right after you came to California.

A. Not that I know of; no, sir; I talked to him on the 15th of November.

Q. Did you talk to him just once in the first week or so that you were in California?

A. Yes, sir.

Q. Is that the conversation that took place there at the mill? A. Yes, sir.

Q. In the course of that conversation do you recall Mr. Lindley telling you that he hadn't made any investigation of you?

A. No, sir, he didn't tell me that.

Q. Do you remember him telling you that they didn't hire people over the telephone? [81]

A. He didn't tell me that, no, sir.

Q. Do you remember him telling you that they had to interview people before they hired them?

A. No, sir.

Q. Do you remember him telling you that he

(Testimony of Willie Henry Townsend.)

intended to correspond with the references you had given to former employers? A. No, sir.

Q. You don't recall him telling you that?

A. No, sir.

Q. Do you recall him telling you that the mill wouldn't be opened until the following March or later?

A. He didn't know when it would be opened.

Q. Did he tell you it would not be open before March?

A. He told me that he didn't know exactly when, but he would place me in the Antioch mill until such time as he could use me there.

Q. Do you remember him telling you that he was investigating other applicants for employment also?

A. No, sir, he didn't tell me that.

Q. You don't remember that at all?

A. No, sir. [82]

* * *

Q. (By Mr. Holmes): Mr. Townsend, do you recall in your conversation with Mr. Stitt on or about the 3rd of September talking to him about the offer of a job by Mr. Fuller?

A. Yes, sir.

Q. Do you remember telling Mr. Stitt that you couldn't refuse a job because you already had one?

A. I told Mr. Stitt that Mr.—I says, "Mr. Fuller told me that he would give me a job as a male operator; but as soon as I told Mr. Bob Fuller that I was working at the old mill for \$1.54,

(Testimony of Willie Henry Townsend.)

he withdraw it." I asked Mr. Stitt to bring Mr. Fuller into his office to verify it, and he refused to bring Mr. Fuller in.

Q. Didn't you tell Mr. Stitt that you couldn't refuse a job because you already had one? Do you remember telling him that?

A. I told him that I told Mr. Fuller as I already said, and as soon as I told Mr. Taylor he withdrew the offer of the broke baler job operator. I told Mr. Stitt that, yes, sir.

Q. You talked to Mr. McCuish after you talked to Mr. Fuller, didn't you? A. Yes, sir.

Q. On your way out of the plant?

A. Yes, sir. [83]

Q. About the 31st of August? A. Yes, sir.

Q. Wednesday? A. Yes, sir.

Q. Do you remember telling Mr. McCuish that Mr. Fuller had offered you a job but that you had told him that you couldn't take a job when you already had one that paid you more money?

A. No; I told Mr. McCuish the same thing that I told Mr. Claude Stitt the following Saturday.

Q. Just a moment. You don't recall telling Mr. McCuish the statement that I have just read to you?

A. No, sir.

Q. You don't recall making that statement?

A. Yes, sir; I told him that Mr. Fuller was going to hire Fisher for the broke baler job.

Q. You told him he was going to hire Fisher?

A. Yes, sir; he was coming out there to see him

(Testimony of Willie Henry Townsend.)

about hiring him. Mr. McCuish is the man that does the hiring.

Q. Didn't you ask Mr. McCuish to hire Mr. Fisher?

A. Yes, I asked him, and Mr. Lindley, too, on February 8th—I had asked Mr. Lindley to give him a chance for the job.

Q. Let's stick to this conversation with Mr. McCuish on or about the 31st of August. You asked Mr. McCuish to give Mr. Fisher that broke baler job, didn't you?

A. I told Mr. McCuish that Mr. Fuller said he was coming [84] out to ask him to put Mr. Fisher on at eleven o'clock that night.

* * *

A. No, sir, I didn't tell him that.

Q. (By Mr. Holmes): Fisher was your brother-in-law? A. That is correct.

Q. Living with you?

A. He is my wife's oldest brother.

Q. And he was out of a job and he was living with you? A. That is correct.

Q. You were trying to get him a job?

A. Yes, sir, and had been since February 8th.

Q. When you refused this job with Mr. Fuller you tried to get Mr. Fisher the job, is that right?

A. No, I didn't refuse the job with Mr. Fuller.

Q. You didn't take the job, did you?

A. I wasn't offered the job. I was offered it and then was withdrawn as soon as I told him I

(Testimony of Willie Henry Townsend.)

was employed. That is the reason he was going to ask Mr. McCuish to give Fisher the job, because there was a vacancy there. [85]

Q. Immediately after discussing the matter with Fuller, you did ask Fuller to give Fisher the job?

A. That's right.

Q. Then you went out and told Mr. McCuish you wanted Fisher to have the job?

A. No, sir, I didn't tell him that.

Q. I believe you have identified a couple of letters that you wrote to Mr. Stitt and that Mr. Stitt wrote to you in the early part of November of 1949; is that right? · A. Yes, sir.

Q. About that time you wrote letters to the Antioch division also, didn't you?

A. Yes, sir.

Q. I will show you a copy of a letter that purports to be addressed to Mr. William W. Van Voorhis, signed by yourself, and ask you if it is a copy of your letter? A. That is correct.

Q. You got a reply, didn't you, from Mr. Van Voorhis? A. Yes, sir.

Q. Is this the reply (showing)?

A. That is correct. [86]

* * *

The Clerk: Defendant's exhibit C in evidence.

* * *

The Clerk: Defendant's exhibit D in evidence.

* * *

Q. (By Mr. Holmes): Mr. Townsend, do you

(Testimony of Willie Henry Townsend.)

remember in your conversation with Mr. Stitt at his home that you told him——

* * *

The Witness: September 11th.

Q. (By Mr. Holmes): That is when you went and spent the whole afternoon before you went up to Sacramento? A. Yes, sir.

Q. You were there about three hours? [88]

A. From ten minutes past one until five until four.

Q. You talked to him for about three hours?

A. Yes, sir.

Q. Do you remember in the course of that conversation talking about this job offered by Fuller and telling Mr. Stitt "I was offered a job but I didn't refuse one"? Did you remember telling him that?

A. I told him the same thing that I told him on the third day of September. I told him that as soon as Mr. Fuller found out that I was not unemployed he withdrew the offer. So therefore I didn't have to refuse the job or I didn't have an opportunity to accept or refuse. The job was offered to me, and as soon as I told the truth he said, "There is a misconception." He says, "I will get somebody else for the job." This is when I mentioned Fisher's name.

Q. Do you remember telling Mr. Stitt that the reason you turned down the job with Fuller was that you were working at Antioch?

(Testimony of Willie Henry Townsend.)

A. No, sir.

Mr. Holmes: That is all.

Redirect Examination

By Mr. Garry:

Q. Mr. Townsend, Mr. Holmes asked you a question as to what you understood the contract conversation you had on the telephone on October 18, 1948, to mean. I believe you testified that there was a position he said that [89] you were promised; isn't that correct? A. That is correct.

Q. What position did you understand him to mean?

A. Well, from—I made application for a night superintendent's job, tour foreman's job; that is, shift foreman throughout the pulp mill.

Q. This application you talk about is the application that was introduced as Defendant's Exhibit B?

A. Yes.

Q. And I show you under date of September 7, 1948, that application; is that correct?

A. Yes, sir. It says, "Kind of work desired: Pulp mill tour foreman."

Q. And that is the position that you understood that you were being employed for, is that correct?

A. Yes, sir.

Mr. Holmes: That is objected to as calling for the subjective conclusion of this witness. [90]

* * *

The Court: Well, as to what his understanding

(Testimony of Willie Henry Townsend.)

was, I agree with you; the objection is good. Sustained, in so far as what understanding he had over the telephone. What discussion they had is perfectly material.

Q. (By Mr. Garry): What understanding did you have as to the position that you were being offered over the telephone, Mr. Townsend?

A. He said my application was before him and that Mr. Stitt [91] had also given him a copy of this recommendation from the North Carolina Pulp Company, and that my reference of the North Carolina Pulp Company proved that I was a capable Kraft pulp mill man and that they were looking for eligible men, so that my application was accepted, and that they would place me in one of the other mills until such time as the pulp mill started. I had made application for pulp mill tour foreman's job, so that was the natural consideration in my mind that I was——

The Court: Just a moment; I am not interested in what you were thinking; I am interested in what was said.

A. He said my application was accepted, and my application was for a Kraft pulp millman.

The Court: That was when you were talking in the telephone conversation? A. Yes, sir.

Q. (By Mr. Garry): In that conversation did you ask him anything in reference to time——

A. I asked him about the housing situation. I asked him would the job be permanent. And he said yes, I could consider it to be a permanent job.

(Testimony of Willie Henry Townsend.)

I told him the reason why I wanted it was I wanted to bring my family with me when I came. And he said I could consider it to be a permanent job, and that if I wasn't able to buy a house the company would help me buy a house. [92]

Q. Now, Mr. Townsend, this job that we are talking about that Mr. Fuller told you about on August 31, 1949, where was this so-called job?

A. That was in the paper mill, different from the Kraft mill.

Q. Had you ever had any experience in print paper, working in a paper mill? A. No, sir.

Q. I didn't get that answer.

A. No, sir, I have never worked in a paper mill.

Q. What has been your service?

A. Always in a Kraft pulp mill. [93]

* * *

Recross-Examination

By Mr. Holmes:

Q. Mr. Townsend, you went over to the San [94] Joaquin plant to work there for a short time, didn't you, the last week in July and the first week in August in 1949?

A. I went there the 4th day of August and worked until the 14th day of August as a janitor and cleanup man.

Q. You worked on the broke baler during that period of time, did you?

A. I helped the man on the broke baler. I helped

(Testimony of Willie Henry Townsend.)

the broke baler operator drag the broke up from underneath the baler machine.

Q. Operating the broke baler was something which you had seen many times, wasn't it?

A. I had saw that done since 1928 but I never had did it.

Q. You hadn't done it until this period in August, is that right? A. That is correct.

Q. Did you have any complaints about your work on that broke baler in August when you were there?

A. No, sir.

Q. You were competent to do that, weren't you?

A. Yes, sir.

Mr. Holmes: That is all.

Q. (By Mr. Garry): What were you getting paid when you were working at that?

A. \$1.42 and 1/2 cents. [95]

* * *

THOMAS M. LINDLEY

called as a witness on behalf of the defendant, sworn.

The Clerk: Will you state your name to the Court, please?

A. Thomas Marion Lindley. [97]

Direct Examination

By Mr. Holmes:

Q. Do you reside at Antioch, California, Mr. Lindley? A. Yes.

Q. You are employed by Fibreboard Products, Inc.? A. Yes.

(Testimony of Thomas M. Lindley.)

Q. Were you employed by Fibreboard between the period of September, 1948, and September, 1949?

A. Yes.

Q. And in what capacity?

A. Superintendent of the pulp mill.

Q. What do you mean by the pulp mill?

A. The pulp mill is the part of a plant where the wood is brought in and cooked up into pulp for the making of paper.

Q. Is that one department of the plant?

A. That is one department.

Q. Are there other departments? A. Yes.

Q. What other departments?

A. Two other departments, the paper mill and what we term the wood room.

Q. Are they all in the same building?

A. The paper mill and the pulp mill are all in the same building and the wood mill is in a different structure.

Q. You are superintendent of the pulp mill, is that correct? [98] A. Yes.

Q. On or about the 18th of October, 1948, do remember having a conversation with Mr. Willie H. Townsend? A. Yes.

Q. Did he call you or did you call him?

A. He called the plant and asked to speak to me.

Q. And did you talk to him? A. Yes.

Q. Do you remember the conversation?

A. Yes.

Q. About how long did it take?

A. Possibly ten minutes.

(Testimony of Thomas M. Lindley.)

Q. Do you recall what Mr. Townsend said when he first spoke to you? A. Yes.

Q. Would you repeat the conversation as nearly as you recall it?

A. As best I recall, Mr. Townsend informed me that he had 20 years, something like that, experience in the pulp industry; that he was out of work; had no work in sight and he was broke; his family were—he was in bad circumstances and had to have a job. He informed me that he could get out to California for just his gasoline expenses and he felt that he could do better out there than he could where he was staying; that in a new mill there was opportunities that there wasn't where he [99] was. His statements also included the time spent in the industry and a very brief description of his education and training, the types of equipment he had worked on.

Q. Was there mention of the fact that he had filed an application with the company?

A. He mentioned that he had filed an application with us and that he had a letter from Mr. Stitt acknowledging the application and that——

* * *

Q. (By Mr. Holmes): Do you recall anything more that was said in this conversation by Mr. Townsend?

A. His experience, his background. On my statement to him at that time that the company had to examine all the records of every applicant——

Q. This is what you said to him in reply?

(Testimony of Thomas M. Lindley.)

A. Yes, this——

Q. All right; state what you said to him.

A. This conversation was two-sided to some extent. I stated [100] to him that we had to examine all the applications; we had to write to several of his—in fact, to all of his past employers; to the effect also that we had a physical examination that he would have to pass before he could be hired. Also I told him that the plant startup date was so far in the future that I couldn't encourage any—I asked him why he wanted to make the move at this time. Then he gave me the story about the hardship in his case; that he was out of work and had nothing in sight there.

Q. Did you tell him that you would give him a permanent job? A. No, sir.

Q. Did you tell that you would refund any amount he spent in transporting himself and family from Alabama to California? A. No.

Q. Did you tell him that the company would help him purchase a home? A. No.

Q. Did you say anything to him concerning transportation money or transportation expenses?

A. No.

Q. Was the subject mentioned in the conversation?

A. He mentioned the subject briefly, as I said, regarding his being able to get out there in a car somehow or other; that it would only cost him his gas, and it would only require his [101] buying the gas.

(Testimony of Thomas M. Lindley.)

Q. My question is did you make any statement with respect to the company paying the transportation expenses? A. No, never.

Q. Did the conversation concern any particular job in the plant? A. No.

Q. Was there any discussion of any particular job in the plant? A. No.

Q. Did Mr. Townsend tell you he would arrive ready for work on November 15th?

A. No, he didn't.

Q. Was there any mention made of a temporary job in another plant?

A. Yes, I stated to him that if he had to have work, provided his records stood up under our examination and so forth, that he could reasonably count on work in the new mill and that we would—in his case where he was out of work, we would try to place him in one of the other plants until we got ready for him at the new mill.

I also stated to Mr. Townsend that I had no authority to hire people over the telephone nor to make contracts. The only reason for this conversation was that in his case, as he stated, he was out of work and he had to have a job. [102]

Q. Was there anything else said in this conversation that you can recall?

A. At the moment I don't recall.

Q. When did you see or talk to Mr. Townsend after this telephone conversation?

A. The morning he arrived there I believe he

(Testimony of Thomas M. Lindley.)

came in the office and said "Hello" or something of that kind, and made it known that he was there.

Q. Do you know approximately when that was?

A. It was something around the middle of the month of November, I believe.

Q. Did you talk to him on that occasion?

A. Not about the job.

Q. You did see him then?

A. I seen him then.

Q. What did you talk about?

A. Well, he stated his intentions of driving this car to some fort, and locating his family in Los Angeles or somewhere where he had relatives and that he would be back in a few days.

Q. Anything else about that that you can recall?

A. I stated to him that we would set the machinery in motion to try to place him in one of the plants.

Q. Anything else in that conversation?

A. No, I don't believe so.

Q. When did you see or talk to Mr. Townsend again after that? [103]

A. Upon his return to the plant after taking his car where he was delivering it to, he returned, and I was notified by Mr. McCuish that he was there, and we had our interview.

Q. Who is Mr. McCuish?

A. He is our personnel manager.

Q. And Mr. McCuish notified you that Mr. Townsend was there? A. Yes.

(Testimony of Thomas M. Lindley.)

Q. Then did you talk to Mr. Townsend on that occasion? A. That's right.

Q. This was sometime in the month of November, 1948? A. Yes.

Q. Where did the conversation take place?

A. In my office there in the plant.

Q. In the plant? A. At the plant.

Q. Was anybody else present?

A. Yes, Mr. McCuish was there.

Q. All of the time or just part of the time?

A. He was there most of the time, I believe.

Q. Can you recall this conversation with Mr. Townsend?

A. Yes, I had him relate his experience, his technical background, and his general background in his own words. I wanted to know in his own words where he had been, what he had done, his experience, so I could be——

Q. Did he tell you that information? [104]

A. Yes, part of it.

Q. What else occurred in this conversation?

A. The discussion centered around his getting started at work there more than anything else. Inasmuch as we had no definite job in mind for him in the plant.

* * *

Q. (By Mr. Holmes): Just state what Mr. Townsend told you in this conversation. What did he say about his need for a job?

A. He said that he had a few dollars in his pocket and had to have a job; his family was in

(Testimony of Thomas M. Lindley.)

Los Angeles, I believe, with relatives, and he wanted to bring them to Antioch at the earliest moment.

Q. Did he say anything about the kind of a job he wanted? A. No, he didn't.

Q. What did you tell him? [105]

A. I told him his request was in the hands of our manager, who was trying to locate work. I pointed out to him that the company had several plants, and it might be possible that he would have to go to one of the other plants to work. He stated that he wanted to live in Antioch, preferred to live there. And my answer to that was, "Well, if that is the case, it might be a little longer getting something for you at the Antioch Division," because that narrowed down the field considerably. He made the statement that that was all right; that he could get by somehow until something showed. I told him that from that point on that our review—— [106]

* * *

Q. (By Mr. Holmes): You were talking about this second conversation with Mr. Townsend after he arrived in Antioch, Mr. Lindley, and would you continue?

A. Yes. At that conversation, after the urgent business at hand was taken care of, I informed Mr. Townsend again that our procedure, our policy, was to examine all references, the background of every applicant; that we had some 23 applications for the job that he seemed to be most interested in; that those would be reviewed along with his and

(Testimony of Thomas M. Lindley.)

would be considered on the basis of the qualifications.

Q. I think you mentioned the Antioch Division. Would you identify it? What do you mean by that?

A. That is our plant in downtown Antioch; that is in Antioch proper. We are out of Antioch three miles.

Q. That is a separate plant from the plant you are working in? A. Yes.

Q. The San Joaquin division is a separate plant?

A. That's right.

Q. When you say the Antioch division you mean the other plant in Antioch, is that correct?

A. Yes.

Q. Anything else in your conversation that you recall?

A. As I said, I told him of our investigation we made, the time we had to do this; we were going to be very religious [108] about it, and consider everyone on the basis of qualifications.

* * *

Q. (By Mr. Holmes): In this conversation did you tell Mr. Townsend that the salaried jobs were all filled but he could take his pick of any of the other jobs in the plant? A. No.

Q. Did he mention a particular job to you in this conversation?

A. He stated that he would prefer to go to work in the recovery department inasmuch as he had more experience in that department.

(Testimony of Thomas M. Lindley.)

Q. Did he tell you he wanted any particular job?

A. Yes, he had stated that he wanted a job as recovery operator.

Q. Did you tell him that he could have that job? [109] A. No.

Q. Did you tell him in this conversation that the company would help him purchase a home?

A. No.

Q. Did you tell him in this conversation that the company would reimburse him or refund to him his traveling expenses? A. No.

Q. How long did this conversation last?

A. The best I recall, something like 15 or 20 minutes.

Q. Is that all of the conversation? Have you related all that you can recall?

A. Yes, as near as I can recall.

Q. Did you do something after this conversation with respect to getting Mr. Townsend a job somewhere? A. Yes.

Q. What did you do?

A. I took his request to the plant manager and he processed it, or rather he attempted to provide Mr. Townsend with work, which we did.

Q. I want to know just what you did. You spoke to the plant manager about getting him a job?

A. Yes.

Q. Is that all that you did? A. Yes.

Q. From that point on it was out of your [110] hands?

A. I informed Mr. Townsend that from that

(Testimony of Thomas M. Lindley.)

point on his contact with the plant personnel, as far as I was concerned, would be with the personnel department.

Q. When did you see Mr. Townsend again or talk to him again?

* * *

A. He was at the plant a month or so later inquiring about conditions and how things were going.

Q. How long did you talk to him on that occasion? A. Not more than five minutes.

Q. Did he talk to you about employment of him personally?

A. Yes, he asked about when we were starting up and if he was going to get the job in the recovery department.

Q. What did you tell him?

A. I told him that our applications had not been processed; we had not received answers from our questionnaires we had mailed; the review of his case was not complete.

Q. When did you see or talk to Mr. Townsend after that?

A. He talked to me one time in the plant. He called about, or rather, he stopped me in the plant stating that he was——

Q. Can you place this as to date at all? [111]

A. It is very hard, because he was in and out of the plant there. I would see him but wouldn't speak to him, and there is so many people there it is very hard.

(Testimony of Thomas M. Lindley.)

Q. Was it several weeks later or several months later?

A. I would say it was two or three months, possibly five months; it was quite some time.

Q. Would that place it in the spring or summer of 1949?

A. That would place it in the spring, say in the month—possibly in the month of May. [111A]

Q. What occurred on this occasion?

A. He stated that the boys over at the Antioch division were railroading him; he had been elected a delegate to the conference at Portland, or up in Oregon somewheres, and he wanted to go, and as soon as he could be transferred to the San Joaquin division as a permanent employee, he couldn't go to that conference.

Q. What did you tell him?

A. I told him I had no need for him at the plant at that time; therefore I couldn't request a transfer.

Q. Anything else said in this conversation?

A. I don't recall anything pertinent.

Q. Anything else that you do recall whether you think it is pertinent or not?

A. No, I don't recall anything else.

Q. All right. When did you see or talk to Mr. Townsend again after that?

A. He came to the house, or called, rather, by telephone, and came to the house and wanted to talk to me about his employment, and I told him that——

(Testimony of Thomas M. Lindley.)

Q. When was this?

A. This was in June or July; I am not positive of the dates.

Q. In 1949? A. '49.

Q. You say he called the house by phone? [112]

A. He called the house, wanted to talk to me, wanted to know if I would be home. I told him yes, to come on out if he wanted to, which he did, and he reiterated his desire to go to work at the plant.

Q. What did you tell him?

A. I told him that we had not come to a conclusion on the application; on the basis of what we had seen it was not good; all of our answers that we were getting were of an adverse and that it didn't look favorable, but we hadn't come to a definite conclusion.

Q. What did he say?

A. Well, he informed me again about the people at Antioch, union people at Antioch, and the union he belonged to railroading him, and he was a victim of circumstances.

Q. Did he explain that to you at all, what he meant by being railroaded or being a victim of circumstances?

A. No; I didn't ask him for an explanation; I wasn't interested in that part of his——

Q. What did you say to him then after he mentioned that?

A. I told him to come to the plant in another week or so and we would give him a final answer.

(Testimony of Thomas M. Lindley.)

Q. Anything else said in that conversation?

A. I am unable to recall.

Q. You say you don't recall anything else in that conversation? [113]

A. No.

Q. All right. When did you see or talk to Mr. Townsend after that? Strike that a moment. Was there anyone else present at the time you talked to him in your home?

A. Yes, I believe some friend of his was with him.

Q. You don't recall who he was?

A. I believe it was this man Fisher that he spoke of—brother-in-law, I believe; some relative.

Q. All right. After this conversation at your home when did you see or talk to him again?

A. In August, the latter part of August, he called wanting to know if I would be at the plant on such and such a date, I believe it was on the following Saturday. I told him I was at the plant every day. And then he called later stating that he couldn't be there the Saturday and wanted to know if he could be there Sunday. So I told him to come out.

Q. Did he come out to the plant on Sunday?

A. Yes.

Q. And you talked to him?

A. Yes.

Q. Where did the conversation take place?

A. In our personnel office.

Q. Was there anybody there besides you and Mr. Townsend?

A. No.

(Testimony of Thomas M. Lindley.)

Q. What did Mr. Townsend say to you when he came in? [114]

A. His words were "Well, am I still—am I going to be hired, or what is the status of my application?"—something of that nature.

Q. What did you tell him?

A. I outlined to him briefly what we had then—what we had gone through in checking the records. I informed him that his application did not stand up with others that we had. I had informed him before we were going to judge his application along with others, and that his was not favorable as other applications were, and therefore we would not consider him for a position in the pulp mill.

Q. What did he say?

A. He says "Well, I don't blame you" or something of that nature. "That has happened to me before." He said, "I have been the victim of rumors."

Q. He said that to you? A. Yes.

Q. What did you say?

A. And I said, "I can't base my decisions on rumors. I don't listen to rumors; they are flying thick and fast; I have to *stock* to facts."

Q. What did Mr. Townsend say?

A. He said, "Well, would you mind telling me where—who gave me a black eye" or "who is black-balling me," or something of that nature. I told him that I couldn't show him the company [115] records. I did state that on the face of his application there is a sentence asking if he had ever re-

(Testimony of Thomas M. Lindley.)

signed or been asked to resign, and he answered "no"; that we had one or two letters from his former employers stating that he was discharged, which was a direct falsehood. And that was about the only—only direct implication or reference to any particular letter.

Q. Did he say anything about those instances to you in this conversation?

A. Well, yes, he did say that again he had been blackballed; that he was misunderstood, the victim of circumstances in every case.

Q. How long did this conversation last?

A. Possibly ten or fifteen minutes.

Q. Was there anything else said that you recall?

A. He asked me—rather, he stated to me that he knew of a mill starting up up in Oregon and wanted to know if I was acquainted with anyone up there. I told him I was acquainted with the superintendent of the pulp mill, and he asked me if I would give him a recommendation. I told him no, I had nothing to base a recommendation on; I couldn't give him a recommendation because I didn't know anything about him other than what other people had told me, and that wasn't public property. Therefore I could not give him a recommendation. And he wanted the name of the man, and I told him the man's [116] name. And he asked if it was all right if he called. I said "It is none of my business; of course you can call him." And he also stated, "I suppose you are going to blackball me." I asked him what he meant by blackball, and he

(Testimony of Thomas M. Lindley.)

had an answer; I don't recall exactly what it was. I told him that the records we had were company business; that it wasn't for me to give it to other companies or to blackball anyone in any way. And that was about the end. He stated that he did not hold any ill will against me for my actions.

Mr. Townsend made several statements talking in generalities, which I don't recall all of them.

Q. Was there any other part of the conversation that you do recall? A. Not at the moment, no.

Q. Did you tell Mr. Townsend in that conversation that you were refusing to hire him on the basis of stories you had heard about him? A. No.

Q. Did you tell him that you were refusing to hire him on the basis of rumors? A. No.

Q. What did you do with respect to Mr. Townsend after he left? Did you advise anybody that you had——

A. I advised our personnel department of our conversation for the records and of my [117] decision——

* * *

Q. (By Mr. Holmes): Did you tell Mr. Stitt of your decision? A. No.

Q. When did you see or talk to Mr. Townsend again?

A. Every once in awhile out in behind—rather in the time alley, exchanged the time of day.

Q. You say you exchanged the time of day with him? A. Yes.

(Testimony of Thomas M. Lindley.)

Mr. Garry: When?

The Witness: I don't recall the date.

Q. (By Mr. Holmes): Can you state how long after this occasion when you told him you weren't going to hire him? A. No I couldn't.

Q. And then did you see him or talk to him after that?

A. I don't recall another conversation. I would see him from time to time in town, of course.

Q. Did you ever talk to him about a job——

A. No. [118]

Q. After this one instance when you told him you weren't going to hire him? A. No.

Q. You haven't talked to him about a job since then? A. No.

* * *

Q. (By Mr. Holmes): When did the recovery department start in operation?

A. Continuous, the latter part of—the first part of September, latter part of August.

* * *

Q. You say in the month of September?

A. In the month of September on a continuous basis.

Q. What do you mean by continuous basis, in work operation?

A. Yes, our plant is operated on a 24-hour basis. We had fired the boiler a few times prior to that for experimental trying out the tubes and so forth.

Q. Did you have your crew hired when you started up in [119] continuous operation?

(Testimony of Thomas M. Lindley.)

A. Yes.

Q. How long before that time did you have your crew hired?

A. I don't recall exactly how long. We had some of the boys there sooner than others. It was our policy to bring the men in with the least possible loss of time between their former jobs and when they started in our plant.

Q. How long have you worked in pulp mills, Mr. Lindley? A. Since December, 1930.

Q. Have you worked in pulp mills all of the time since that time? A. Yes.

Q. You are familiar with the machinery used in pulp mills? A. Yes.

Q. Was this mill at the San Joaquin division a new mill? A. Completely new, yes.

Q. Was there any new type of machinery in the mill?

A. All of our equipment was the very latest type, yes.

Q. I don't mean whether or not the machinery itself was new or used; I mean of its type, was it a new type?

A. No, it is all conventional equipment.

Q. Did any of the processes or equipment differ from what you had used before in the industry?

A. No, not basically.

Q. In the pulp industry is it common to have a so-called [120] paper mill and a so-called pulp mill together in the same plant?

(Testimony of Thomas M. Lindley.)

A. That is always the case. In most cases, that is true.

* * *

Cross-Examination

By Mr. Garry:

Q. Mr. Lindley, how old a man are you?

A. Thirty-six.

Q. Thirty-six. And you have been in the pulp mill business since 1930, is that right?

A. That's right.

Q. Where have you worked?

A. Port Townsend, Washington, Tacoma, Washington, and at Antioch.

Q. In Antioch. Did you ever work in Oregon?

A. No.

Q. When did you come to work at Antioch?

A. My employment began with Fibreboard September or October [121] 1st, 1948.

Q. October 1st, 1948? A. Yes.

Q. And are you still with them, Mr. Lindley?

A. Yes.

Q. What are your duties and work that you are doing there beginning with October 1, 1948?

A. My—one of my duties was to organize crews for starting up that plant; assist in the construction of the plant where possible.

Q. Did you ever have a superintendent's job before? A. No.

Q. This is your first employment as a superintendent, is that right? A. Yes.

(Testimony of Thomas M. Lindley.)

Q. When you started to work there October 1, 1948, did you know that the firm you went to work for had advertised in papers, trade journals, throughout the United States looking for paper pulp mill men, recovery operators and so forth?

A. Yes, I was aware of that.

Q. You were familiar with that? A. Yes.

Q. Do you recall what those advertisements said?

A. No. [122]

* * *

The Court: Do you recollect what was in the ad?

The Witness: Not word for word; it was just a small ad for experienced pulp and paper mill workers.

The Court: You don't have to say what was in it. All I want to know is do you recall what was in it?

The Witness: I recall part of it.

Q. (By Mr. Garry): Were you given any rules or directions on how you were to employ anyone on October the 1st when you went to work there?

A. Yes.

Q. Were you given a list of those applicants and people who had inquired for employment?

A. Yes. [123]

Q. Were you familiar with the name of Mr. Townsend when you received the telephone call on October 18, 1948?

A. Not distinctly familiar, no.

Q. Mr. Lindley, didn't you tell Mr. Townsend that you had the application before you; you had

(Testimony of Thomas M. Lindley.)

read his application, and that you were familiar with what Mr. Stitt had written? Didn't you tell him that? A. No.

Q. You never did? A. No.

Q. Well, then, is it your testimony then, Mr. Lindley, that when Mr. Townsend telephoned you on October 18, 1948, that you were a complete stranger to the name of Mr. Townsend?

A. No, that is not correct.

Q. Will you tell us what is correct?

A. Mr. Townsend, stated, as I told you before, I said I had seen his application; that I had not reviewed it; I had no opportunity to do so. I recognized the name because it was one of many. Other than that I didn't know anything about him.

Q. I show you this Defendant's Exhibit B and ask you to look at it, please.

A. Yes, I have seen that before.

Q. You have seen that before.

A. Yes. [124]

Q. You saw that before you had the conversation with Mr. Townsend on October 18, 1948, did you not?

A. I merely counted—yes, I had seen it.

Q. And you knew that the work that he was applying for and the type of work that he had said that he was qualified for in this application, did you not? A. Yes.

Q. And, Mr. Lindley, you had an opening for that kind of a position, did you not?

A. Not at that particular time, no.

(Testimony of Thomas M. Lindley.)

Q. Well, you——

A. The plant was not complete.

Q. But you knew, with your experience since 1930, that you had to have men qualified for that type of work?

A. That is correct.

Q. When the plant opened, isn't that right?

A. That is correct.

Q. And what was the type of work that Mr. Townsend was telling you that he was especially qualified to do?

A. Pulp mill work in general.

Q. And in addition to that, he told you about his experience as a tour foreman; isn't that right?

A. I don't recall him saying that over the telephone.

Q. He didn't tell you that?

A. I don't recall that. [125]

Q. You were familiar with the places that he had worked, were you not, from the application and also the conversation you had with him?

A. You mean the companies he had worked for?

Q. Yes.

A. No, I was not.

Q. Did you make any notes of the conversation you had with Mr. Townsend, Mr. Lindley?

A. No, I didn't.

Q. In other words, the conversation you had with Mr. Townsend on October 18, 1948, which you testified to on direct examination took approximately ten minutes; isn't that right?

A. Approximately, yes.

Q. What time of the day or night was this?

(Testimony of Thomas M. Lindley.)

A. As best I recall, it was in the early afternoon.

Q. Where were you when the telephone call reached you?

A. I was in my office in the plant, or rather, in the main office.

Q. You were in the main office in Antioch?

A. Yes.

Q. Did you write down any notation or any notes?

A. No, sir.

Q. You didn't keep any diary of the conversation?

A. No.

Q. You did, however, write a letter on October 19, 1948, to [126] Mr. Townsend, did you not?

A. Yes.

Q. And that letter that you wrote, the facts of the letter, would it be your testimony that you just wrote what you remembered from the conversation the night before without any written memoranda?

A. That's right.

Q. How is it, Mr. Lindley, that from October 18, 1948, to the present time, how is it that you now recall what was said in that conversation that afternoon?

A. I recall the conversation as I have related it to you in this Court.

Q. I said, how is it that you recall it? What brings it to your memory?

A. I don't understand your question.

Q. This conversation, Mr. Lindley, took place in 1948 on October 18th.

A. Yes.

Q. Isn't that right?

A. Yes.

(Testimony of Thomas M. Lindley.)

Q. You must have had very many other conversations with people, occasions and circumstances. By your own testimony, Mr. Lindley, you have told us that you didn't keep a memorandum or a diary of the conversation you had; isn't that correct?

A. That is correct. [127]

Q. What I would like to know if you will tell the Court, how is it that you remember this particular conversation as to what Mr. Townsend said and as to what you said?

A. We were dealing in human lives; we weren't talking through our hat. What I told Mr. Townsend I had to back up. Mr. Townsend was making a move and I realized it. I pointed out to him definitely what he was faced with in moving him and his family from Alabama out to California. I remember those conversations very distinctly.

Q. In other words, you recall that Mr. Townsend—you recall from his application and you also recall the conversation you had with Mr. Townsend on that date, and he told you he had a family; isn't that right?

A. Yes.

Q. You remembered that? A. Yes.

Q. You also remembered that, Mr. Lindley, when you saw his application, did you not?

A. My first glimpse of Mr. Townsend's application was merely to classify it. There are seven departments—there are seven jobs in the pulp mill.

Q. And the only reason, Mr. Lindley, that you recall this conversation is because human lives were involved, is that right?

(Testimony of Thomas M. Lindley.)

A. That's right. It was very important to me that I tell [128] Mr. Townsend the facts; that we apprise him of the situation in California that he would be faced with on coming here. Mr. Townsend made it very clear to me that he would accept that—take that chance, to put it in his own words.

Q. I believe you testified, sir, that Mr. Townsend told you he wasn't working at the present time when he was talking to you?

A. He made that statement, yes.

Q. You knew from his application that he was working, did you not? [129]

* * *

A. I didn't know that he was working, because I hadn't had a chance to study his application; I merely classified it.

Q. (By Mr. Garry): Did you know that he had stated in his application under the question of "Why do you wish to change?" "Wish to return to the Kraft Pulp Mill"? Did you know that that was in his application blank?

A. No, not at that time.

Q. Now, Mr. Lindley, you just told us that you remembered this conversation because you were dealing with human lives? A. Yes.

Q. In looking over these applications as you received them didn't you examine any of them from the standpoint, or this standpoint, to see why a man wants to go to work for your concern? Didn't you determine that? [130]

* * *

(Testimony of Thomas M. Lindley.)

A. In answer to that, at the time I received Mr. Townsend's phone call, I had had no opportunity to make a study of the applications; I only classified them as to departments.

Q. (By Mr. Garry): Mr. Lindley, so I don't have to go through every one of these items, let me ask you this question: What did you notice in this application so that you were able to classify Mr. Townsend's application?

A. He stated in there that he was qualified for several jobs. I marked it for one department that appeared to be the most likely from the standpoint of his experience, and I classified it as such.

Q. When you say you marked it, did you mark it before you had the telephone conversation with Mr. Townsend?

A. I don't recall definitely whether I did or not.

Q. Do you recall making a mark on the document at all?

A. I don't recall. I don't do that. The personnel office makes the marks. [131]

Q. You said you marked something. What were you referring to?

A. What I meant was that I asked the personnel manager's secretary to note the department, recovery department, and put it in that file. I presume she put a red mark on it of some kind.

Q. Did you make your request in writing or by an oral statement? A. By verbal request.

Q. In other words, was she in the same office with you at the time?

(Testimony of Thomas M. Lindley.)

A. She was in the same building.

Q. In the same building? A. Yes.

Q. How did you communicate with her?

A. I carried it from my office out to theirs.

Q. You took the application and went in there and gave it to her, is that right?

A. No, no, the applications were processed in batches, and they came in every morning and I picked the ones that we were through with, that is, that we had had a chance to give a passing look at and classify. Mr. Townsend's application had been there some time prior to my coming to the employ of the company.

Q. Did Mr. Stitt call your attention to Mr. [132] Townsend? A. No.

Q. You don't recall how you got this information over to the girl in the classification or the personnel office, do you?

* * *

A. I don't recall exactly what method we used for conveying the information from one office to another. When I arrived there all of these applications were there, and they were put in my file cabinet. As I reviewed them, I put them on the desk and they were picked up. I don't recall just what method they used to do it.

Q. (By Mr. Garry): Mr. Lindley, you had a conversation with Mr. Townsend in the afternoon on the 18th in your office. [133]

* * *

(Testimony of Thomas M. Lindley.)

Q. (By Mr. Garry): You had this conversation with Mr. Townsend over the telephone, is that right? A. That is right.

Q. After you got through with the conversation, Mr. Lindley, what did you do?

A. I immediately went to the personnel office, asked for his application. I told the girl there—I dictated an answer, or rather, a confirmation of our telephone conversation, where he would get it immediately.

Q. When you said you went there immediately, did you do it the same afternoon, or did you do it the following day?

A. I did it that afternoon. Whether it was mailed that afternoon I don't know.

Q. But you went right over there, right after you got through talking to him, isn't that right?

A. Yes.

Q. At that time when you went over there and you pulled his application out, did you study it?

A. I asked where to pull it out. She let me [134] see it.

Q. You saw it? A. Yes.

Q. Did you have an opportunity to fully study it at that time?

* * *

Q. (By Mr. Garry): You did take the application out and study it, is that correct? [135]

A. No, I didn't give it a detailed study at that time, for I didn't have time to. Mr. Townsend, was, according to his story, very desperate, and he had,

(Testimony of Thomas M. Lindley.)

as he stated, his—he was determined to come out here regardless of whether we gave him a job or not.

Q. You say Mr. Townsend told you he was very desperate, is that correct? A. Yes.

Q. You made a mental note of that, is that correct? A. That's right.

Q. When you took the application out, didn't you notice on the application blank "Are you employed at present?"

Answer, "Yes.

"Employer's name and address?

"Otis Elevator Company, New York City, New York."

A. That application was made prior to our telephone conversation; therefore I couldn't take it against his word.

Q. Didn't that thought occur to you, Mr. Lindley? Now you are in charge of this department; you are hiring men to work in your department, in your pulp mill, isn't that right? That was your task? A. That was my duty, yes.

Q. Didn't the thought occur to you to determine whether this man was really unemployed?

A. No. [136]

Q. You saw a discrepancy between what he said to you over the telephone and his application blank, did you not?

A. No, I didn't. I didn't say I did.

Q. And you didn't notice this portion of the application blank?

(Testimony of Thomas M. Lindley.)

A. What way would I have of knowing whether he was working or not?

Q. He said it in writing——

A. This was prior to our telephone conversation.

* * *

Q. (By Mr. Garry): Mr. Lindley, I call your attention to Plaintiff's Exhibit No. 3, a letter sent by you to Mr. Townsend. Will you read that, please? A. In its entirety?

Q. Yes, so you will be familiar with it. [137]

* * *

A. I recognize it as having written it.

The Court: That is the letter you wrote?

A. Yes.

Q. (By Mr. Garry): You remember that letter, do you not? A. Yes.

Q. That is the letter you wrote after you had the conversation with Mr. Townsend?

A. Yes.

Q. You told Mr. Townsend, you testified earlier on direct examination, that you had no authority to hire anyone over the telephone; is that correct?

A. Yes.

Q. Then how do you account for the fact of inviting Mr. Townsend to come down and you would have a job for him?

A. I stated in my letter that if it was his desire to come to the Coast we would try to place him, or we would place him.

Q. You didn't say anything in this letter that

(Testimony of Thomas M. Lindley.)

he would have to pass a physical examination, did you?

A. I had told him that over the telephone.

Q. You didn't tell him anything about the fact that his application would have to be passed upon in this letter that you wrote to him, did you? [138]

A. No.

* * *

Q. (By Mr. Garry): Mr. Lindley, I call your attention to this letter of October 19, 1948, where you said that "We were pleased to receive your telephone call of October 18th. In line with our conversation, the new mill is still under construction and it will be about the first of March before actual operations begin. However, if it is your desire to come to the Coast at an earlier date, we will place you in one of our mills at whatever they might have for you until we begin operating." [139]

* * *

Q. (By Mr. Garry): I believe in your direct testimony, Mr. Lindley, you stated that nothing was said about housing by Mr. Townsend over the telephone; is that correct?

A. I don't recall that I said anything. I didn't say anything about housing. I believe I did mention housing—that was a very critical thing at the time; we were very much concerned about it.

Q. You say you believe you did?

A. My statement was that we didn't—I made no commitment or promise of housing it *it* in any

(Testimony of Thomas M. Lindley.)

way. I informed him of the housing situation in Antioch. [141]

Q. You just thought of that now after reading this letter, did you not? On your direct examination I believe the question was asked you if you mentioned any housing to Mr. Townsend, and I believe your answer was that you didn't; is that correct? A. I cannot recall.

* * *

The Court: But the thing I am interested in, what is your independent recollection of what you told Mr. Townsend about housing?

The Witness: I related to Mr. Townsend here the critical situation about housing. I informed him something about the situation on sales, rentals were practically non-existent, and something about the price range. [142]

* * *

Q. (By Mr. Garry): Then, Mr. Lindley, because you read this letter a few moments ago that I handed you, this conversation on housing was refreshed in your memory, is that right?

A. No, that is not right.

Q. Did Mr. Townsend ask you if he could buy a home there? A. No.

Q. Over the telephone?

A. No. He asked about housing.

Q. What did he ask you about housing?

A. I don't recall his exact words.

Q. You had already testified that Mr. Townsend

(Testimony of Thomas M. Lindley.)

told you he was in desperate financial circumstances? A. Yes.

Q. Isn't that correct? A. Yes.

Q. And yet you write him a letter and say, "However, there are some homes available for purchase ranging in price from \$6500 to \$9000."

A. I attempted to inform him of the situation.

Q. As a matter of fact, Mr. Lindley, you were very anxious to [143] have Mr. Townsend come down there because you were desperate for a crew to start in your plant, you were trying to get ready; isn't that correct? A. No, that is not true.

Q. You weren't anxious? A. No.

Q. How many applications had you received up to that time for recovery work?

A. We received some 20—I don't recall; between 20 and 30 applications.

Q. 20 and 30 applications?

A. As my memory serves me.

Q. How many men did you need?

A. I needed four.

Q. You needed four men? A. Yes.

Q. You needed four men. Is that why you advertised in all these trade journals?

A. We are only speaking of one job.

Q. I am talking about pulp mill work.

A. I understood your question to be about the recovery plant.

Q. I am talking about the pulp mill work. You were developing a crew for that, were you not?

A. I am a little confused. Will you start over

(Testimony of Thomas M. Lindley.)

again on this line of questions and we will get started out right? [144]

Q. How many applications had you received from advertisements in trade journals on October 18, 1948?

A. I don't recall the exact number; there was possibly over a hundred.

Q. Over a hundred? A. At least.

Q. At least?

A. I recall that much about it.

Q. How many men did you need in this recovery—new plant that you were opening up, no matter where you put them?

* * *

Mr. Garry: I meant the whole plant. He has already said he needed four in that plant.

The Court: You used the word "recovery" and that may have been confusing.

Q. (By Mr. Garry): How many men did you need in the pulp mill work?

A. We needed approximately 68.

Q. You needed 68 men?

A. Yes. Of that 68 we had planned to absorb as many local [145] people as possible so that would cut down the number on the outside, people coming into the pulp mill, to approximately 25.

Q. Then for these 25 men that this entire new plant needed you were advertising in trade journals all over the United States; is that your testimony?

A. Your word in there—

* * *

(Testimony of Thomas M. Lindley.)

The Court: Your position is, I take it, you want to get at the fact of how many trade journals they did advertise in and for what.

Mr. Garry: That is right.

The Court: Let's get to that phase of it, then.

The Witness: To the best of my knowledge——

The Court: I will overrule the objection, and the question has been reframed in accordance with this discussion. [146]

A. To the best of my knowledge they only advertised in the Southern Pulp & Paper Industry. That is a trade journal that is of interest only to the pulp industry.

The Court: What were you trying to get from those advertisements?

A. For the pulp mill, the department I was interested in, we were trying to get in the neighborhood of 25 or 30.

Q. Of any specialized type of work?

A. For the various departments, yes, for skilled work.

The Court: Is there anything further you want to know about that?

Q. (By Mr. Garry): At the time you had this conversation with Mr. Townsend, Mr. Lindley, how many men did you actually need on that afternoon?

A. As I have stated before, in the neighborhood of 25 to 30 men.

Q. You needed 25 or 30 men, is that correct?

A. For the entire pulp mill.

(Testimony of Thomas M. Lindley.)

Q. You were very anxious to have Mr. Townsend?
A. No, I wasn't anxious.

Q. ———come to California?

A. No, I wasn't anxious.

Q. Then why did you send him a letter on October 19, 1948?

A. Due to the urgency of his situation as stated to me over the telephone, we were trying to help him out. [147]

Q. You were trying to be charitable, is that it?

A. That's right; that's it exactly, because we didn't need him at that time.

Q. Just trying to help Mr. Townsend out?

A. We didn't need him at that time. We were unable to place the people we were getting in the area; there was considerable effort and trouble on our part to place these people coming in here in the other plants. We were burdening the other plants with our men. At the time of our telephone conversation, I couldn't foresee starting up that plant; therefore Mr. Townsend's entrance here or appearance here was a detriment to us.

Q. Didn't you tell Mr. Townsend that you expected the plant would open in March?

A. As near as I knew at that time, that was my thinking.

Q. That wasn't very far away from the time you wrote this letter, was it?

* * *

A. Well, that telephone conversation was in Oc-

(Testimony of Thomas M. Lindley.)

tober and this letter was written in October. I would say that from March, I was trying to foresee considerably more than I knew [148] about. We were having—at the time we wrote that we were having a strike there at the plant; we didn't know how long the strike would last.

Q. (By Mr. Garry): You didn't know how long what would last?

A. There was a strike on at the plant, and we had no idea how long it would last.

Q. There was a strike on at your plant. Where was the strike?

* * *

Q. Where was the strike?

A. The strike didn't concern Fibreboard itself. The only [149] thing concerned—it was construction labor that was on strike, not anything to do with us. It merely held up construction of the plant. Therefore, it made it much harder to foresee any start-up date.

Q. In other words, it was a strike that was going on in connection with the new plant?

A. With the construction of the plant.

Q. Did you recall from the application of Mr. Townsend that Mr. Townsend had had experience setting up new plants? A. No.

* * *

Q. (By Mr. Garry): Did Mr. Townsend tell you when he would be in California?

A. No, he did not.

(Testimony of Thomas M. Lindley.)

Q. He didn't tell you that he would be there on the 15th day of November, 1948?

A. No, he did not.

Q. He could have said that and it might have escaped your [150] memory? Could that be possible? A. It is possible.

Q. Do you recall the date that you saw Mr. Townsend?

A. No, I don't recall the date exactly.

Q. Do you keep a diary of it in your office, of the people you interview and people you talk to?

A. No.

Q. I believe that Mr. Townsend testified yesterday that he saw you on the 15th day of November. Would that be the approximate date?

A. It is possible, yes.

Q. What was the conversation that you had the first time you saw him?

A. The conversation was, as I stated this morning, about his arriving here. He mentioned briefly his family, about the trip they had enroute; and he was delivering a car somewheres down around San Francisco, and he wanted to know what the possibility was of going to work. That is the sum and substance of that.

Q. He had this letter dated October 19th with him too, didn't he?

A. I don't know whether he did or not.

Q. As a matter of fact, he showed it to you, did he not, and said, "I brought this with me. Here

(Testimony of Thomas M. Lindley.)

I am, 'Alabam' Townsend''? Didn't he say something like that to you?

A. No, I don't know if he did. I wouldn't say he did or [151] didn't. Announcing his arrival was enough.

Q. How long did that conversation last?

A. A very few minutes. I don't recall how long it lasted.

Q. When did you see him again?

A. Some week or so later; after he delivered his car.

Q. A week later?

A. I don't recall exactly; possibly a week; maybe a little longer.

Q. You say you saw him again about a week later?

A. I don't recall whether it was a week or a week and a half or three days; it was some short period of time.

Q. When did Mr. Townsend go to work for the Fibreboard Company? A. I don't know.

Q. The second time you had a conversation with him, I believe it was your direct testimony, was it, that you say Mr. McCuish was with you in the office? A. Yes.

Q. What time of the day was that?

A. I believe it was in the forenoon; I don't recall about the hour.

Q. And that is the second time you had seen Mr. Townsend; is that your testimony?

A. As best I recall, yes.

(Testimony of Thomas M. Lindley.)

Q. Did he go to work that same day? [152]

A. No.

Q. When did he go to work?

A. I don't know.

Q. Would it make any difference in your time of his starting if I was to tell you that Mr. Townsend went to work on the 22nd day of November, 1948?

A. I don't know as it would. Mr. Townsend was told when he came back that we would try to place him; that the other division known as the Antioch Division would take him on as soon as they had an opening. I don't recall the exact date he went to work. He was out around the plant a few times; he was out around the time rack a few times, and some three or four days later the Personnel Department informed me that Mr. Townsend was employed at Antioch. I inquired every day as to what progress they had made. The best I recall it wasn't over a week after his second appearance after he was put to work. [153]

* * *

Q. (By Mr. Garry): Mr. Lindley, calling your attention to the first time that you had a conversation with Mr. Townsend in Antioch, you say that conversation only took a couple of minutes?

A. A very few minutes.

Q. And the next time you had a conversation it took about 15 or 20 minutes, isn't that correct?

A. I don't recall off hand now how many minutes

(Testimony of Thomas M. Lindley.)

it was. It was sufficient for an interview for the purpose we had in mind to determine his possible candidacy for the job.

Q. Did Mr. Townsend at that time show you any papers or notebook of any kind to help you out in your new job? A. No.

Q. You don't recall him offering you a shift report on what happened in different shifts in the operation of a new plant?

A. I don't recall any such thing, no.

Q. By this time had you seen the recommendation that Mr. Stitt returned after making a copy for the company, the recommendation of the North Carolina Pulp Mill Company? (Showing [155] paper to witness.)

A. Yes, I had seen that, I believe.

Q. Had you seen that prior to the time you had the telephone conversation with Mr. Townsend?

A. No.

Q. Did you see it before you wrote the letter to Mr. Townsend?

A. No, I don't believe so; it may have been among his—in his file, but I didn't—as I stated before, I didn't study that file, and therefore I wouldn't be——

Q. Did anyone authorize you or direct you to write that letter to Mr. Townsend on October 19, 1948? A. No.

Q. You did that entirely of your own accord?

A. Yes.

Q. Didn't discuss it with Mr. Stitt?

(Testimony of Thomas M. Lindley.)

A. I seem to recall there was some discussion between—no, I don't believe there was. I couldn't say there was.

Q. Did you discuss it with Mr. McCuish?

A. Well, Mr. McCuish's office took care of all of our correspondence.

Q. You made the statement this morning, and at the end of your conversation you turned and spoke to the plant manager and you said that from that time on the "Personnel Manager will handle all matters pertaining to you," referring to Townsend?

A. You are asking me a question? [156]

Q. Yes. Did you make that statement?

A. Yes.

Q. What did you have in mind when you said that to him?

A. That the personnel office would handle all contact between the other division and ours regarding Mr. Townsend's temporary employment and I wouldn't have anything to do with that; that would be handled through the personnel department. Therefore, Mr. McCuish would know—would be the first to know when they had—or, rather, when one of the other divisions had a place to put Mr. Townsend.

Q. And you weren't making a reference at that time to the recovery plant foreman, recovery man's position, that you had discussed with Mr. Townsend?

A. No.

Q. You did discuss in this conversation that you

(Testimony of Thomas M. Lindley.)

were planning to use Mr. Townsend in the recovery room, did you not?

A. That was the department that his file or his application was placed under.

Q. I asked you if you discussed that with him?

A. With who?

Q. With Mr. Townsend. A. At what time?

Q. At the time that you had this conversation that on direct examination you said took 15 or 20 minutes and now you don't recall how long it [157] took.

A. We discussed the recovery job, yes.

Q. You said you saw him again about a month after that?

A. I believe so, out in the plant.

Q. You don't recall the exact date?

A. No, I don't.

Q. You have never made any memorandum or any data in reference to any conversation you had with Mr. Townsend, have you?

A. No, not especially.

Q. Then the next time you saw him—I am just following your own chronological statement of when you saw Mr. Townsend—you stated this morning you saw him twice immediately after he came back?

A. Yes.

Q. And you saw him again one month later?

A. I didn't remember saying a month; I don't recall exactly the period of time that elapsed between our first two meetings and the time out in the plant that I talked to him. I have no recollec-

(Testimony of Thomas M. Lindley.)

tion directly of the time involved there; possibly a month or so.

Q. Then you said that you saw him again a couple of months later; then you made the time about May. You said at that time that Mr. Townsend told you that the boys were railroading him; isn't that right?

A. No, I didn't say that at that time. At the time that Mr. Townsend made the statement that the boys were railroading [158] him was when he was out at our plant on a temporary assignment some time——

Q. When was that, sir? A. Sir?

Q. When was that?

A. I believe that was in May; in the late spring; April or May some time.

Q. That is what I asked you, if it was some time in May.

A. That is correct; it was some time in May.

Q. The boys were railroading him?

A. That's right.

Q. As a matter of fact, Mr. Lindley, the discussion about railroading didn't occur until a long time after, in August; isn't that a fact?

A. He had been over at the plant from the time he came there in November until the Unions were electing their delegates for the general convention, and that was just prior to that time that he talked to me and tried to get me to request his transfer.

Q. Mr. Lindley, isn't the convention that you are speaking of some time in September?

(Testimony of Thomas M. Lindley.)

A. No, that is in June.

Q. Then you also testified that the next time you saw Mr. Townsend was some time in June or July, when he came to your house, is that [159] correct?

A. Yes.

* * *

Q. (By Mr. Garry): And you also testified at that time Mr. Townsend had someone else with him?

A. At the time Mr. Townsend came to my house his brother-in-law, I believe, was there—was with him.

Q. What was the discussion you had with him at that time?

A. His possible employment with us.

Q. What was said, do you recall?

A. I don't recall the entire conversation. I recall that Mr. Townsend wanted to know whether or not he was going to work out there; how he stood in the lineup of applications. And I remember telling him that his references that he had given us weren't too good, they weren't too favorable, and it was somewhat doubtful.

Q. You told him this about June or July and you say that this happened at your home, is that correct?

A. Yes.

Q. As a matter of fact, Mr. Lindley, didn't this conversation take place in your home February 8, 1949, and not in June or July?

A. In June or July is the best I can recall.

Q. And you have no independent recollection of the time at all? [160]

(Testimony of Thomas M. Lindley.)

A. Not exactly, no.

Q. As a matter of fact, the conversation at that time between you and Mr. Townsend was over Mr. Fisher gaining employment in the plant?

A. No.

Q. And it had no reference at all—wait until I finish the question, Mr. Lindley, then you can say “No” or “Yes”—had no reference at all to the discussion between yourself and Mr. Townsend as to employment or the lack of employment?

A. Are you finished?

Q. Yes.

A. His statements to me were as I stated to you before. He wanted to know about his possibility of employment. He made several statements— I questioned him somewhat about his statements that he had never been fired. I didn't like that, and I wanted to explore that a little to help me make up my mind.

Q. Did you send for Mr. Townsend?

A. No.

Q. Then why did he come down to see you? Your plant wasn't operating, was it?

A. I have stated as far as I know the reason; there he is; you can ask him why he came to see me. That is all I know, is his questions that he asked me.

Q. Did you have his file at your home when you were talking to [161] him?

A. No, I didn't.

Q. Did you report this conversation you had with

(Testimony of Thomas M. Lindley.)

Mr. Townsend on this day at your home to anyone?

A. No, not that I know of.

Q. Mr. Lindley, have you discussed this case with anyone? A. Yes.

Q. Who have you discussed it with?

A. With it seems to me everyone in Antioch. Mr. Townsend is a very unusual figure, and it was quite involved. This Townsend case has been bothering us for quite some time. We have two other suits, as I recall, and Mr. Townsend, you will have to admit, is a very unusual man, and you couldn't escape discussing with someone his case. I have discussed his case with many people.

Q. When did you first start thinking what the conversation was about on October 18th? When is the first time you had occasion to discuss that conversation with anyone?

A. October 18th—was that our telephone conversation? A. Yes.

A. I don't recall when it was brought out.

Q. You don't remember that?

A. I don't recall who I discussed it with off hand.

Q. Did you discharge Mr. Townsend?

A. I couldn't discharge a man that had never been hired. [162]

Q. You were in court yesterday, were you not?

A. Yes.

Q. You heard Mr. Townsend say that he had a meeting with you? A. Yes, sir.

Q. Which at one time was set for Saturday

(Testimony of Thomas M. Lindley.)

morning, and the because he was working that day he called you and made the meeting with your permission on a Sunday; isn't that correct?

A. I believe that is substantially correct, yes.

Q. I believe the date on that would be August 28th. You heard his testimony that you told him that "Townsend, due to rumors I am not going to hire you; I am going to discharge you." Did you make such a statement, or did you not?

A. I did not.

Q. What did you tell him on that day?

A. I have already related what I told Mr. Townsend on that day.

Q. Do it again if you will, please.

A. I told him that we had studied his case; we had the answers of his former employers; we knew how many times he had moved from one job to another; I had gone into his technical background and, therefore, we didn't feel that he was—his application was up to the standards that we were hiring.

Q. Had you done all that, Mr. Lindley?

A. Yes.

Q. As a matter of fact, you had done all [163] that?

A. Yes, sir.

Q. Had you gone into his technical background?

A. Somewhat, yes.

Q. In what way did you go into his technical background?

A. I established that he didn't have any.

(Testimony of Thomas M. Lindley.)

Q. Did you investigate the recommendations from the North Carolina Pulp Company?

A. Yes.

Q. And did you find that their recommendations were any different from that recommendation dated February 1, 1944, which your office copied before they sent him the letter of September 1, 1948?

A. I didn't take into consideration anything that was in our files prior to the time—as far as the recommendation I am speaking of, it wasn't taken into account, any of his antecedents, any of his recommendations that he gave us. Anyone can pick up any amount of recommendations. That doesn't mean a thing.

Q. Mr. Lindley, I think I asked you a very simple question. The question I asked you is, did you investigate the recommendation dated February 1, 1944, of the North Carolina Pulp Company?

A. I don't recall specifically that we investigated with that company. I believe we did.

Q. You don't know whether you did or you [164] didn't?

A. I couldn't say for sure we did or I couldn't say for sure we didn't.

Q. Do recall the elections for a delegate in the Union on or about the 1st or 2nd or 3rd of August, 1949?

A. No, sir.

Q. You don't remember that?

A. I know nothing about it.

Q. Mr. Lindley, isn't it a fact that you had

(Testimony of Thomas M. Lindley.)

planned on giving Mr. Townsend the job, he had been fully, completely satisfactory, until you found in your examination that Mr. Townsend had been a former organizer for the paper mill and pulp sulphite workers? A. No, sir.

Q. That is not true, is it?

A. That is not true.

Q. You haven't made any such statement to anyone in Antioch? A. No.

Q. Can you tell me, Mr. Lindley, while you are sitting there just in what way did Mr. Townsend not measure up to any of the things that he had put in the application and the application that he had made for the job as a recovery man?

A. We had two letters, I believe, with adverse comments on him about his character. We had one letter stating that he had been fired for fighting on the job. His application directly says on the face of it that he was never—he says that he was [165] never fired. This letter from this company states that he was. It had been several years prior to the start up of our mill since Mr. Townsend had been actively engaged in pulp mill work. Some of our equipment was much more modern than any he had had acquaintance with. There was many reasons for it.

Q. Mr. Lindley, when did you discover all this?

A. In the process of examining his application.

Q. His application blank, as I remember it, and as you have already indicated that you examined, showed that he had not been actively engaged in

(Testimony of Thomas M. Lindley.)

anything except as a tour foreman from 1940 to 1945 and that he had not followed the paper industry since then. He had already made that very clear to you, had he not?

A. Part of that was on the face of his application, yes.

Q. And he had already told you that, had he not, sir?

A. I don't know that he did or didn't.

Q. As a matter of fact, you don't remember what was said or what wasn't said; isn't that right?

A. I recall very clearly.

Q. Did you ever confront Mr. Townsend with any of these statements that you found and you assumed that they were not true? Did you ever confront him with those statements? A. No.

Q. You never did? A. No, sir.

Q. Did you discuss with Mr. Stitt, prior to August 28, 1949, before you had this conversation telling Mr. Townsend that you weren't going to engage him in the recovery room? A. No.

Q. You never had any such conversation; just took it upon yourself to do it?

A. I don't recall. It wasn't necessary for me to take it up with Mr. Stitt. I reviewed it with my immediate superior.

Q. Who was your immediate superior?

A. Mr. Cash.

Q. Mr. Cash? A. Yes.

Q. Did Mr. Cash know Mr. Townsend?

A. No, not to my knowledge.

(Testimony of Thomas M. Lindley.)

Q. Didn't you tell Mr. Townsend on August 28, 1949, "Townsend, you are too damned good a Union man to be working in here"? A. No, sir.

Q. You never made that statement?

A. No.

Q. Did you ever make a recommendation to anyone in your company, point out to them that you had found certain discrepancies in his application, and did you ever tell anyone that you had received communications that this man was not the man that you thought he was or purported to be?

A. No.

Q. You never did tell that to anybody? [167]

A. No.

Q. I didn't get the answer. A. No.

Q. I thought you said you discussed it with Mr. Cash.

A. I don't think I understood your question correctly.

* * *

Mr. Garry: I will limit it just to the Company.

Mr. Holmes: Limiting that just to the Company, did you ever tell anyone in the Company?

A. Yes, I reviewed all the applications of everyone.

The Court: How about Mr. Townsend?

A. Yes, I did.

Q. (By Mr. Garry): With whom?

A. Mr. McCuish.

Q. Anyone else? A. No. [168]

(Testimony of Thomas M. Lindley.)

Q. Were these communications addressed to you?

A. They were addressed to our personnel department.

Q. And who gave them to you?

A. The personnel department.

Q. Who in the personnel department?

A. Mr. McCuish, I believe.

Q. Mr. McCuish gave you those communications?

A. Yes; that is, he didn't give them to me; he let me see them.

Q. When did you get those?

A. During the period of time that we were investigating Mr. Townsend's application.

Q. Mr. Lindley, can you give us a more definite date?

A. No; they don't come in on a certain date; there was a good many of them coming in; I don't recall the exact date.

Q. You say a good many of them came in. From whom?

A. From the different individuals. We were getting letters and references every day. There was too many to recall exact dates of everyone of them.

Q. Mr. Lindley, you have already stated that Mr. Townsend is a very unusual person?

A. Yes.

Q. You said on two prior occasions he has sued your company; isn't that correct?

A. Yes, sir.

(Testimony of Thomas M. Lindley.)

Q. And this case has been in progress since December, 1949; [169] isn't that correct?

A. Yes.

Q. You have known about this case during that time?

A. I believe so.

Q. You also stated that there were two communications that you received in reference to Mr. Townsend?

A. I said there was at least two.

Q. When did those two come in?

A. I don't recall.

Q. As a matter of fact, Mr. Lindley, there have been no such communications; isn't that right?

A. No, that isn't right.

Q. Who are they from?

A. His former employers.

Q. Who? A. I don't recall at the moment.

Q. Mr. Lindley, do you recall having a conversation with Mr. Townsend on the 28th day of August, the day that we are talking about right now, wherein you reprimanded him for writing to a banker by the name of Mr. Bean, and Mr. Bean wrote to you about the character and the references of Mr. Townsend? Do you remember that?

A. Yes, there was—I remember asking him a question; I didn't reprimand him. I was in no position to reprimand Mr. Townsend at any [170] time.

Q. What do you mean? How did you ask him a question?

A. I just asked him if he wrote to this man, who

(Testimony of Thomas M. Lindley.)

this man was, and what possible implication there was in writing to him.

Q. Who was that letter addressed to, sir?

A. I don't know.

Q. It wasn't addressed to you, was it?

A. It was a part of Mr. Townsend's record, and, as I have stated before many times, everything goes through the personnel. The chances are it was written to the personnel; possibly Mr. Stitt; I don't know. [171]

* * *

GORDON V. McCUIISH

a witness called for defendant, sworn.

The Clerk: Would you state your name to the Court?

The Witness: Gordon V. McCuish.

Direct Examination

By Mr. Holmes:

Q. Are you a resident of Antioch, Mr. McCuish? A. Yes, I am.

Q. Are you employed by Fibreboard Products, Inc.? A. Yes.

Q. Were you employed by that company between October of 1948, and September of 1949? A. Yes.

Q. In what capacity were you employed during that period? A. As personnel manager.

Q. Do you know W. H. Townsend? [172]

(Testimony of Gordon V. McCuish.)

A. Yes, I do.

Q. Do you remember the first time you saw him?

A. Yes.

Q. Do you know about when that was?

A. About the middle of November as near as I can recall.

Q. In what year? A. 1948.

Q. Where did you see him?

A. Mr. Townsend came into my office some time during the morning; I wouldn't say the time, and he came in and said, "I am Mr. W. H. Townsend, and I have sent an application, and I am here to apply for work."

Q. What did you say to him?

A. I told him that at the present time the plant was still under construction and we weren't employing anyone at this division at this time.

Q. What did he say?

A. He asked me if there was a possibility of getting work at one of our other divisions. I told him I would have to clear that with Mr. Stitt, our plant manager, and with Mr. Lindley, who had had correspondence with him prior to the day he called.

Q. How did you know that?

A. Being personnel manager, we have a file and record of the applications and supplements that is added to applications.

Q. Did you recall having seen an application from Mr. [173] Townsend? A. Yes, I did.

Q. You recognized his name when he came in?

A. Yes, I did.

(Testimony of Gordon V. McCuish.)

Q. How long did you talk to him on this occasion?

A. Not too long; possibly 15 or 20 minutes. I was discussing mostly Mr. Townsend's trip to California with his family.

Q. He told you about that?

A. Yes, he did.

Q. Did he say how he had gotten to California?

A. Yes, he said he drove a car out from back east, from Alabama, and that he was delivering that to Ft. Mason within the next day or two, and I said——

Q. He told you that in the course of this conversation?

A. Yes, he did.

Q. Go ahead.

A. And he said that upon delivery of the car that he would be back and see if we could find something for him to do.

Q. What did you tell him?

A. We told him that we had been placing some of our men at the Antioch Division.

Mr. Garry: Excuse me one minute. He says "We." I haven't heard anybody but himself. Will you clarify that, please?

Q. (By Mr. Holmes): What do you mean?

A. By the way, I might mention that I had no authority to place [174] anyone at any division without first being instructed by the plant manager or one of the Superintendents in the plant.

Q. By "we" who are you referring to?

A. I am referring to Mr. Stitt and Mr. Lindley.

(Testimony of Gordon V. McCuish.)

Q. You are referring to the management of the plant? A. The management of the plant.

Q. Was anybody else present at this conversation?

A. Prior to that time, no. I had tried to contact Mr. Lindley. In due course of time he came walking down——

Q. While you were talking to Mr. Townsend?

A. While I was talking to Mr. Townsend. If I recall correctly, we asked our receptionist to call him on the phone and see if we couldn't have him come into the office to talk to Mr. Townsend.

Q. Did Mr. Lindley arrive during this conversation? A. In due time he did, yes.

Q. Anything else said in the conversation that you recall?

A. Not much more at that time other than introducing Mr. Townsend to Mr. Lindley. And, briefly, Mr. Townsend stating that he was here to work and he would like to have a job; that he had this car, and about those few comments Mr. Lindley said, "You come into my office," and he left and went into Mr. Lindley's office at that time.

Q. And the talk continued in Mr. Lindley's office?

A. From then on the talk continued in Mr. Lindley's office. [175]

Q. That was the end of your conversation with Mr. Townsend?

A. At that first meeting, yes.

(Testimony of Gordon V. McCuish.)

Q. When did you see or talk to Mr. Townsend again after that?

A. At a later date, which was possibly two or three days—it may have been a week; there was a little time elapsed—he made delivery of the car to Fort Townsend—to Ft. Mason.

Q. Just a minute. How did you know he had delivered the car?

A. Because he had told me.

Q. He came in the office again?

A. He came in the office and told me he had delivered the car.

Q. In this second conversation who was present when he came to see you in your office?

A. Only I when he first came in.

Q. The two of you?

A. Just the two of us.

Q. He told you he had delivered the car to Ft. Mason? A. That is correct.

Q. Now continue; tell me that conversation with you, if you will, please.

A. There was very little conversation at that time. I again contacted Mr. Lindley and called him in, and Mr. Lindley came in and during the time the three of us were in the office Mr. Townsend had asked if we—if Mr. Lindley had been fortunate enough to secure him a position at one of the other mills, [176] preferably Antioch, if possible. Mr. Lindley had told him that he hadn't done so at the present time but he would start then to try and locate him at one of the other mills.

(Testimony of Gordon V. McCuish.)

I would like to go back on the first meeting, if I may, and state this: that Mr. Townsend came in and took his billfold out of his pocket and said "This is about all I have got." He had a few dollars left—a dollar and some cents. This time he came back and he said, "I have to go to work."

Q. You mean the second meeting?

A. The second meeting, he said, "I have to go to work; my funds are exhausted." So Mr. Lindley told him then that he had a number of applications; that he hadn't been on the job long enough to review all of them and that there was a necessary procedure which must be followed on each application. The procedure that was followed was not discussed in my presence.

Q. You heard him tell Mr. Townsend about the procedure, however?

A. I heard him say that we had a number of applications and that they must be processed before—

Q. Did this conversation between Lindley and Townsend continue outside of your presence?

A. That was about the extent of our conversation at that time.

Q. What happened?

A. Mr. Lindley and Mr. Townsend again went to Mr. Lindley's office. [177]

Q. Then they were outside of your hearing?

A. That's right.

Q. Is there anything else about this conversation up to the time they left you that you can recall?

(Testimony of Gordon V. McCuish.)

A. Not to my knowledge. It was very brief.

Q. About how long did you talk to Mr. Townsend, or were you in his presence?

A. On the second meeting?

Q. Yes.

A. Oh, ten or fifteen or twenty minutes, half an hour; I don't know; it wasn't very long. It wasn't too long. [178]

* * *

Q. (By Mr. Holmes): When did you see Mr. Townsend again to talk to, Mr. McCuish, after this second interview that you have just related?

A. Periodically; quite often; I wouldn't begin to say how many times, just that it was often.

Q. Would you say where you saw him?

A. At the plant, on the streets of Antioch, and so forth.

Q. Did you ever talk to him about a job on those occasions?

A. Frequently Mr. Townsend would call by telephone or stop at the plant and ask when the mill was going to start, and that was about the extent of talking about the job part of it, as far as I was concerned.

Q. Did you ever talk to Mr. Townsend about a job in the paper mill in the plant?

A. Yes, I did. [179]

Q. Can you state when?

A. I would say on or about the middle of August, or thereabouts; maybe later or a little before.

(Testimony of Gordon V. McCuish.)

Q. Where did you talk to Mr. Townsend?

A. Mr. Fuller—may I go back just a minute?

Q. No; just answer the question.

A. Where did I talk to Mr. Townsend?

Q. Yes. A. In my office.

Q. In your office? A. Yes.

Q. Was anybody else there?

A. The girl, my secretary.

Q. And Mr. Townsend?

A. And Mr. Townsend.

Q. What was said in this conversation?

A. Mr. Townsend came into my office and said that Mr. Fuller had offered him a job as broke bailer, but that he wasn't going to take that job, and would we consider a Mr. Fisher. I told him my position was not to employ anyone without first the supervisor authorizing their employment, and told him that I couldn't employ Mr. Fisher or no other individual without the supervisor first authorizing his employment.

Q. Anything else said in that conversation?

A. To the best of my knowledge there was nothing other than [180] asking for Mr. Fisher and walking on out.

Q. Do you know where Mr. Townsend had been just prior to that conversation?

A. He had been out in the mill talking to Mr. Fuller.

* * *

Q. (By Mr. Holmes): Had you talked to Mr.

(Testimony of Gordon V. McCuish.)

Townsend that day yourself prior to this conversation? A. Yes, I had.

Q. How did you talk to him?

A. I talked to him shortly after one o'clock and told him that there was a vacancy in the mill, in the board mill, and Mr. Fuller wished to interview him for that position. Mr. Townsend left that building and went out and talked to Mr. Fuller.

Q. Then how long after that did you talk to him in this other conversation that you have related?

A. Half an hour or 45 minutes. [181]

* * *

Cross-Examination

By Mr. Garry:

Q. Mr. McCuish, how long have you been with the Fibreboard Company?

A. September 16, 1948.

Q. September 16, 1948? A. That's right.

Q. Are you still with them? A. I am.

Q. Where did you come from before you took this job?

A. I was twelve years and some odd months superintendent of the Heidemont Canning Company at Antioch.

Q. Were you employed prior to the time that you went to work?

A. I was on leave of absence; I was traveling. I traveled.

Q. Mr. McCuish, you were fairly new to the procedure, to the personnel and the environs there

(Testimony of Gordon V. McCuish.)

at the time that you met Mr. Townsend for the first time; isn't that a fact?

A. I would say no; I had worked with personnel work for over 25 years.

Q. I mean in the Fibreboard Company; I am not talking about your personal experience. You were just new in that place yourself, isn't that the fact?

A. I came in there in September, '48, but I wasn't new to personnel work, I assure you.

Q. That isn't what I am asking you, sir. I am asking you if the work at Fibreboard, the personnel and the surroundings there [182] were all new to you; isn't that right?

A. No; I was taken to San Francisco and schooled on that for some time, and also at the Antioch Division and at the Stockton Division.

Q. When did you go to work for the Fibreboard Company, Mr. McCuish?

A. September 16, 1948.

Q. When did your schooling start with the Fibreboard Company? After September 16, 1948?

A. That's right.

Q. Where did you spend your first month?

A. Between San Francisco, the San Joaquin and Antioch and Stockton.

Q. You traveled most of the time, did you not, from one place to the other?

A. Well, I still spent eight hours, or approximately eight hours in the office with personnel training.

(Testimony of Gordon V. McCuish.)

Q. Every day?

A. Yes, practically every day.

Q. From September 16, 1948, isn't that right?

A. That's right.

Q. That's right? From that period on?

A. From that period on.

Q. You first met Mr. Townsend some time in the middle of November, isn't that right? [183]

A. That's right.

Q. You had been on the job about two months?

A. That's correct.

Q. Do you recall the day that you first saw Mr. Townsend? A. No, not the exact date.

Q. You said that you saw Mr. Townsend in the middle of August, did you say?

A. In the middle of November. I wasn't working——

Q. No; I am talking about now the period of time of 1949; I am sorry, Mr. McCuish.

A. It was during the month of August; it could have been the forepart of August.

Q. Or the latter part of August?

A. I don't recall distinctly.

Q. At any rate, it was the day that Mr. Townsend came over from another plant, isn't that right?

A. That is correct.

Q. To be interviewed by Mr. Fuller, was that it?

A. That's right.

Q. And Mr. Townsend told you about his brother-in-law, Mr. Fisher; do you remember that?

(Testimony of Gordon V. McCuish.)

A. I can't say that I am sure I knew Mr. Fisher was Mr. Townsend's brother-in-law.

Q. But he did mention a Mr. Fisher, did he not?

A. He mentioned a Mr. Fisher, yes. [184]

Q. Isn't it also a fact that Mr. Fuller that very day asked to have Mr. Fisher come down to the paper mill plant? [185]

* * *

CLAUDE M. STITT

a witness called for defendant; sworn.

The Clerk: Would you state your name to the Court, please?

The Witness: Claude M. Stitt.

Direct Examination

By Mr. Holmes:

Q. Mr. Stitt, you are a resident of Antioch?

A. Yes, sir.

Q. Have you been for many years?

A. Yes, sir.

Q. You are employed by Fibreboard Products, Inc.?

A. Yes.

Q. And have been employed by them for many years?

A. Yes.

Q. You are still employed by them?

A. Yes.

Q. Between the month of September, 1948, and September, 1949, what was your position?

A. Plant manager of the San Joaquin Division, Fibreboard Products.

(Testimony of Claude M. Stitt.)

Q. Was that the new plant on the outskirts of the City of Antioch? A. Yes, sir.

Q. Do you know the plaintiff here, Mr. W. H. Townsend? A. Yes. [188]

Q. Do you recall when you first met Mr. Townsend? A. Yes.

Q. Will you state what that occasion was, please?

A. I would judge it was about the middle of November, 1948, when I was introduced to him by Mr. McCuish, our personnel manager, in a sort of hallway.

Q. What was said on that occasion?

A. After the formal introduction, Mr. Townsend said "Mr. Claude, here I am, and I think I can do a good job for you."

Q. What did you say?

A. I told him, "Well, we would have to see about that, because at the present time we weren't engaging any hands other than supervisory staff members."

Q. What did Mr. Townsend say?

A. He said he would like to have a job because he was very low on finances.

Q. Did you reply to that?

A. I told him that would have to be cleared through the personnel department.

Q. Anything else said in that conversation?

A. Not as I recall.

Q. When did you next see Mr. Townsend to talk to him?

A. Oh, other than occasions saying "Hello"

(Testimony of Claude M. Stitt.)

when I may have seen him on the street or so, was when he had been sent out by the Antioch Division to the San Joaquin Division to help us [189] during an emergency that we had during the start up on what we term the No. 1 machine.

Q. When did that take place?

A. I would say that was about the forepart of August, 1949.

Q. You say Mr. Townsend was sent out there from the Antioch Division?

A. From the Antioch Division.

Q. Working in the San Joaquin Division temporarily?

A. Yes, because we had borrowed a few hands from them to help with an emergency. We had an emergency.

Q. Do you know about how long he was there?

A. As I recall it, about two weeks.

Q. Did you talk to him during that period?

A. Yes.

Q. Well, will you state where and when?

A. Well, other than just casually saying "Hello" and "Good morning," passing by, there is one specific occasion that I recall. He stated that he had been elected a delegate to the labor convention and that he was very proud of having been elected. And the other occasion that I recall that he asked me if——

Q. Was this other occasion when you talked to him during this same two weeks period?

A. Yes.

(Testimony of Claude M. Stitt.)

Q. Where did you talk to him on this second occasion? [190]

A. It was on what we would term the machine room main floor.

Q. What was said in this next conversation?

A. After the usual good morning and "How are you," he stated that he had heard that some of the employees had received transportation costs and reimbursement for what they had put out. He wanted to know if that was true. I told him "Yes," that was true.

Q. What did he say then?

A. And he asked, well, when he was to get his. My reply to that question was that as of the present time he had no basis to receive any because of two facts: One, he was not on the payroll of the San Joaquin Division; the second being that he had come out on his own from the east, and that we hadn't compensated any individual for that; it was only when we had made previous commitments to cover any transportation costs that we were reimbursing for it.

Q. Is that the first time that you had ever talked to Mr. Townsend about that particular matter?

A. That is the first and the only time.

Q. Was there anything else said in that conversation?

A. He stated that he had been doing different kinds of work and that he would like to get on as a steady employee of the San Joaquin Division.

Q. What did you tell him?

(Testimony of Claude M. Stitt.)

A. I told him that was a problem to be handled through the [191] personnel department.

Q. Anything else said in the conversation?

A. Not as I recall.

Q. When did you talk to Mr. Townsend again after that particular conversation?

A. As I recall, it was the first Saturday in September of 1949.

Q. And what was the occasion?

A. I had received a call from a Mr. Colter, Standing Committee Member of Local 249, International Brotherhood of Pulp, Sulphite and Paper Mill Workers at the Antioch Division asking if I could see him and Mr. Townsend that morning. I told him yes, and they came out, and Mr. Townsend, I could readily see, if I may use a slang expression, was somewhat "Hot under the collar"; and he stated he would like to get at the root of all the accusations that had been made and why he had been fired—he had not been given a job at the San Joaquin Division.

Q. Did he say where he had been fired?

A. He stated that he had been fired from both Divisions.

Q. What did you say to him?

A. I told him I couldn't answer relative to what had taken place at the Antioch Division, because that was a matter completely out of my hands; I didn't have any of the facts pertaining to it. I further told him that it was impossible for him to use the word about having been fired from the

(Testimony of Claude M. Stitt.)

San [192] Joaquin Division because he wasn't on the San Joaquin Division payroll.

He then stated well, in addition to being fired, as he insisted upon it, he had also not turned down a job—which I had asked him as to why he had turned the job down.

Q. You asked him why he had turned a job down?

A. Yes, because I had the report from our personnel department that he had refused the position of a baler man in the machine room, which he had been doing, or helping on it, during the period that we had borrowed him from the Antioch Division, and he said he hadn't turned that down, the reason being that he already had a job, and since he had a job it was impossible to turn down another one; and he made the accusation several times that he had been fired from a San Joaquin Division by Mr. Lindley, and I kept trying to tell him that that would be an impossibility, because he wasn't on the payroll of the San Joaquin Division. And he asked me then if I would call Mr. Lindley in and would settle the matter. I told him that I would not prefer to do that, because with the temper of the feeling at the time and also that Mr. Lindley, due to conditions prevailing in the pulp mill was quite busy that morning, but I would take it upon myself to investigate what had taken place prior to his reporting to me that he had been fired.

Q. What did Mr. Townsend say to that?

A. He said, well, if it was all that could be done

(Testimony of Claude M. Stitt.)

at the [193] time it would have to serve, and he thanked me for the hearing on that morning, and Mr. Colter and he left.

Q. Did Mr. Colter say anything all during this time? A. No.

Q. How long did the conversation take?

A. I would say about an hour or an hour and a quarter.

Q. Anything else said that you can remember?

A. Not specifically at that time.

Q. When did you talk to Mr. Townsend again after that?

A. Well, a Sunday near the middle of the month of September, 1949.

Q. Where did you talk to him?

A. At my home.

Q. Was that on a Sunday afternoon?

A. Yes.

Q. How long did Mr. Townsend spend with you that Sunday afternoon?

A. I would say it was practically all afternoon.

Q. And can you estimate the number of hours or minutes?

A. I would say roughly from about 1:00 until a little after 4:00—about 4:30.

Q. What was the subject of that conversation, or subjects, plural?

A. He had called earlier, wanted to know if I would see him. I told him yes, I would see him. So he came over. And first [194] of all he inquired as to the outcome of my promise to investigate this

(Testimony of Claude M. Stitt.)

as he termed being fired by a representative of the San Joaquin Division. I told him that I had investigated that, and Mr. Lindley had told me very explicitly that he hadn't told Mr. Townsend that he had been fired; that he had told Mr. Townsend that he hadn't counted on using him in his department—that is the pulp mill department—the reasons being that after investigation of his qualifications and suitability, he felt that, out of a number of applicants he had had, he had better men for the positions involved.

I also told him that I had talked to the late Mr. Fuller relative to the matter of him being offered a position by Mr. Fuller in what we would term the board mill department, and Mr. Fuller had stated that Mr. Townsend had refused to accept a job on the background that he had had a job over at the Antioch Division which was paying him more money, and since he had the job already, he would like to have Mr. Fuller take it up with the personnel department to see if a Mr. Fisher couldn't be given that position.

The next main topic of the conversation was Mr. Townsend offered a severe criticism of the officials of Local 240 International Brotherhood of Pulp, Sulphite and Paper Mill Workers. My reply to that was, well, if everything was true as to what he had been telling me, that maybe his criticism was just and maybe it wasn't just; but if he felt something was [195] wrong, he should take it up with the authorities of the Union involved and not

(Testimony of Claude M. Stitt.)

blame representatives of Fibreboard, or take up their time on it. He said that he would be carrying through on that matter.

And the rest of the afternoon was spent by Mr. Townsend outlining to me what he had did, giving evidence to show positions that he had held, various data that he had accumulated, different cards that he had had to show what he had been doing before that.

Q. You mean there were documents or papers that he showed you?

A. They were papers, cards, and so forth.

Q. How did he bring those? How were they carried?

A. He brought them over in a brief case.

Q. Did he physically show them to you on that afternoon?

A. Yes, he laid them out all over the floor.

Q. How long did that particular part of the discussion take?

A. I would say roughly about two hours.

Q. Was there anything else on this Sunday afternoon discussion that you can recall?

A. No, sir.

Q. You referred to Mr. Fuller as the "late Mr. Fuller," I believe. Will you state when he died?

A. Early in 1950, as I recall it.

Q. Did you have occasion to talk to Mr. Townsend again after [196] this Sunday afternoon?

A. Yes.

Q. Will you state approximately when?

(Testimony of Claude M. Stitt.)

A. As I recall, it was in October of 1949.

Q. Where?

A. He came out to the plant, and I think the first day that he came one of the officials of the concern was there, which I told Mr. Townsend I was tied up with and he said, "Well, I will be back tomorrow or the next day or so." And within the next day or so he came back, and after the usual "Hello" and "How are you" he asked if there was any reason why he could not be given a job at the San Joaquin Division. I told him as far as I was personally concerned at that time there wasn't any; but it must be borne in mind that he had already refused one position that had been offered to him, and that based on the criticism that had been referred to by Mr. Townsend, the Department heads would want to study very carefully before they would offer him one, and he said that was all right, he felt that they would work out all right.

Then he also asked if I would talk to Mr. McCuish to see if there was any reason—if the personnel department had anything that would bar him from seeking employment in the San Joaquin Division.

Q. How long did this conversation take?

A. I would say roughly about 20 minutes or half an hour. [197]

Q. And this was in your office?

A. Right.

Q. Did you have any other discussions with Mr. Townsend after that time?

A. Well, we would meet occasionally on the

(Testimony of Claude M. Stitt.)

street and say "Hello" and he would ask as to how things were going. He would tell me that he was still interested in getting a job at the San Joaquin Division.

Q. Did you ever tell Mr. Townsend that he was denied employment because of rumors?

A. No, sir.

Q. Or stories about him? A. No, sir.

Q. Among other things, when Mr. Townsend talked to you on this Sunday afternoon, did he mention he had been an organizer for the Pulp and Sulphite Paper Mill Workers Union?

A. Yes, sir, he did.

Q. Is there a collective bargaining agreement at this San Joaquin Division plant?

A. Yes.

Q. With what Union is that agreement?

A. It is with two unions. International Brotherhood of Pulp and Sulphite Paper Mill Workers, and International Brotherhood of Paper Makers.

Q. Is the International Brotherhood of Pulp and Sulphite [198] Paper Mill Workers the same union that Mr. Townsend told you he had been a representative of? A. Right.

Q. Do you know the approximate date when the first collective bargaining agreement was entered into at that plant?

A. As I recall, it was the forepart of July, 1949.

Q. Did you have some of your crew hired at that time?

(Testimony of Claude M. Stitt.)

A. Yes, as far as the No. 1 machine crew, the semi-chemical pulp mill crew, or the yard crew, the power plant, and most of the maintenance crew, and part of the hands for the recovery boiler crew, they were on the job.

Q. Was that a large portion?

A. I would say he had roughly 70 per cent or more of the total number of hands needed for the plant at that time.

Mr. Holmes: I think that is all.

The Court: You may cross-examine, Mr. Garry.

Cross-Examination

By Mr. Garry:

Q. Mr. Stitt, how long have you been with the Fibreboard Products Company?

A. Counting there and one of the other predecessor companies, ever since December of 1924.

Q. How long have you been in a supervisory or managerial capacity?

A. From December of 1927, in what we term—I was supervisor and manager of a department. In July of 1946, I took over the [199] managership of what we term the Antioch Division, or January 1st, that was, 1946.

Q. What are you doing at the present time?

A. I am Manager of what they term the Central Engineering Division.

Q. In Antioch? A. Antioch.

Q. That includes both plants, does it?

(Testimony of Claude M. Stitt.)

A. That includes all the plants and subsidiaries of Fibreboard.

Q. Are you familiar with the ad that appeared in the various trade journals that Mr. Townsend saw?

A. I am familiar with the ad that appeared in one trade journal, and that was the Southern Pulp & Paper Manufacturer.

Q. Do you recall what was in that ad?

A. I don't recall the wording; I recall the gist of it.

Q. The gist of it is good enough.

A. It was to the effect that a pulp mill would be opening on the Pacific Coast at some approximate date, and parties interested should communicate with box certain number of the Southern Pulp & Paper Manufacturer.

Q. And in response to that ad—how long did you run that ad?

A. Two months, as I recall.

Q. Two different issues, isn't that right? [200]

A. Yes.

Q. How many people did you need at that time? A. I would say about 300.

Q. You needed 300 people. And these were more or less experienced people that you were asking for?

A. May I add to that? Because we hadn't—

Q. I don't want to cut you off.

A. Because we hadn't engaged anybody other than certain key supervisory staff at that time.

(Testimony of Claude M. Stitt.)

Q. You needed 300 people when you put the ad in there, isn't that right? A. Yes.

Q. You did receive a communication from Mr. Townsend, did you not? A. Yes, sir.

Q. And you replied to him on the first day of September, 1948? A. That's right.

Q. You replied to him yourself?

A. That's right.

Q. Were there any other communications from other paper and pulp mill men who corresponded with you at that time?

A. Along about that time or a little later we had a large number of them.

Q. I say about that time, say the first of September of 1948? A. Yes. [201]

Q. How much correspondence did you receive, do you recall, in reference to the ad that you had looking for paper and pulp mill men?

A. I don't recall the exact number, but there were quite a few.

Q. Would you say there were 10 or 20?

A. I would say there was nearer 70.

Q. About 70? And you had 300 openings for jobs, isn't that right?

A. At that time, roughly speaking.

Q. So when you wrote this letter to Mr. Townsend on the first day of September, 1948, you had openings for 300 men; isn't that correct?

A. That's right, because we hadn't made commitments to certain people who we had in mind making commitments to.

(Testimony of Claude M. Stitt.)

Q. You were quite anxious to get hold of men like Townsend, from what you had seen in his application?

A. May I answer the question in this way—

Q. Answer it in any way you like.

A. We were quite anxious to get the best qualified men we could to fill every position in the mill that was still vacant.

Q. On the first day of September when you wrote him the letter and with it returning his qualifications or the recommendations from the North Carolina Pulp Company, you were satisfied that a man like Townsend, from what you had seen so far, was someone that you wanted to pursue further; isn't that right? [202]

A. Yes, we were desirous of investigating him further.

Q. What did you do pursuant to that investigation?

A. The matter was turned over to the pulp mill superintendent, Mr. Lindley, and our personnel department, with instructions that they check the references, the background of what we would term his suitability from past record and to see if the statements made, as far as we could ascertain, in his application were correct.

Q. Mr. Stitt, when did you tell Mr. Lindley that? A. On his arrival.

Q. On the first day of October, 1948?

A. No; I would say it may not have been the

(Testimony of Claude M. Stitt.)

first day, but I would say it was either that day or immediately afterwards.

Q. Did you make any particular comments on the Townsend application to Mr. Lindley?

A. Not any more than would pertain to any other application.

Q. At the time of October 1st how many openings did you have for the new pulp mill?

A. I can't answer the question because I don't know how many openings we had at that time that were still vacant.

Q. You did mention on direct examination that on or about July, 1949, you entered into a collective bargaining contract with the bargaining union; isn't that correct? A. That is right.

Q. Now at that time you said you had filled your capacity to [203] the tune of about 70 per cent? A. That's right.

Q. You still had openings for 30 per cent, isn't that correct? A. Roughly that.

Q. How big a staff is there in that mill?

A. Slightly over 400, I would say.

Q. In other words, you had about 280 filled?

A. That's right.

* * *

Q. Isn't it part of Mr. Lindley's duties to know how many men should be working in the mill, how many men he needs?

A. As superintendent, the answer is yes. [204]

* * *

(Testimony of Claude M. Stitt.)

Mr. Garry: Did you ever bother, Mr. Stitt, to investigate yourself the references that Mr. Townsend sent to you?

A. Not until after we got in the turmoil with Mr. Townsend.

Q. What do you mean by "turmoil," sir?

A. After Mr. Townsend came out and made the accusations that Saturday morning, then I took it upon myself to make a thorough investigation.

Q. May I ask you the question, what Saturday morning?

A. I think it was the first Saturday of September, 1949.

Q. The first Saturday. Is this the accusation you are talking about where he came there with the Union representative?

A. That's right.

Q. That is the time that you, yourself made a complete investigation?

A. That's right.

Q. Up to that time you had made no investigation; is that right?

A. I personally hadn't. The matter had been referred to the personnel department, to the department heads.

Q. Who is Mr. Van Voorhis?

A. The plant engineer at the Antioch Division of Fibreboard.

Q. As I recall, Mr. Stitt, you said that in July your plant, the paper pulp mill, was filled to the capacity of 70 per cent; [205] that is correct, is it not?

(Testimony of Claude M. Stitt.)

A. I didn't specifically state the pulp mill; I said the plant requirements.

Q. The plant requirement was 70 per cent. What was the paper pulp mill requirement?

Mr. Holmes: That term was ambiguous and inaccurate, your Honor. There is no paper pulp mill; there is a paper mill and a pulp mill. I think that is clear from the evidence already.

The Court: I think he wants to know about the pulp mill. Is that what you want to know?

Mr. Garry: That is right.

A. I haven't records to state what the percentage was as far as the pulp mill is concerned.

Q. Were you filled to capacity in July, 1949?

A. I would say no, but I just stated now that I haven't the records to base a reply as to any estimate or percentage. All I can say, it was largely filled, but what the percentage was I couldn't say.

Q. You said that because of this interview you had with the business agent on the first Saturday in September that you, yourself, made an investigation?

A. May I make a correction? The interview wasn't with the business agent; the interview primarily was between Mr. Townsend and myself. A member of the standing committee sat [206] there without saying a word.

Q. He was there, was he not?

A. He was there.

Q. He was there in an official capacity, was he not, Mr. Stitt?

A. I presume that he was.

(Testimony of Claude M. Stitt.)

Q. You said that you personally made an investigation? A. That's right.

Q. And in your investigation did you find that there had been any check up of any of the references furnished by Mr. Townsend?

A. Yes, sir.

Q. What did you find? What check-ups had been made?

A. The one specifically that I recall that we had written to the parties that he had given as the reference, the Gulf States Paper Company.

Q. Yes.

A. And we had a report which was contrary to what Mr. Townsend had given us in connection with his experience with the Gulf States Paper Company.

Q. When was that inquiry made?

A. I don't recall any exact date; that was handled through the personnel department.

Q. As a matter of fact, this information was gotten after all this so-called turmoil you are talking about; isn't that a fact, [207] Mr. Stitt?

A. No, sir, not as far as I am concerned, because investigations will prove, as far as my investigation showed, that we had data on Mr. Townsend prior to this turmoil condition.

Q. It is your testimony, then, Mr. Stitt, that these so-called inquiries were made prior to the turmoil date?

A. I won't state that every one of them was, but I will state that they were made—that is at least

(Testimony of Claude M. Stitt.)

a part of them, prior to the time September 3, 1949.

Q. But you don't know when?

A. That's right, because I haven't the information available.

Q. Then how do you account for the fact that on September 2nd after the first Saturday that we are talking about you had one of your representatives send a letter to Mr. Townsend notifying him that he had turned down a job in your plant, in the paper mill plant—in the paper mill division?

A. I don't think your statement is correct that one of my representatives wrote a letter telling him that he had turned down a job.

Q. Isn't Mr. Van Voorhis a man under your jurisdiction?

A. No, sir; as I have said earlier in my testimony, he is the plant engineer at the Antioch Division. I have no direct supervision over Mr. Van Voorhis.

Q. None whatsoever?

A. None whatsoever. [208]

* * *

Q. (By Mr. Garry): Did you or anyone under your jurisdiction pass on this information that Mr. Townsend had allegedly turned down a job on the 31st day of August, 1949, to Mr. Van Voorhis, or anyone else in the plant down there?

A. I personally wrote a letter to Mr. Sanford,

(Testimony of Claude M. Stitt.)

who was then manager of the Antioch Division which was to the effect that he had turned down a position which had been offered to him at the San Joaquin Division.

Q. You are the one that did that?

A. That is right. [209]

* * *

Q. (By Mr. Garry): In the course of your investigation you found that Mr. Townsend at one time had organized a group of foremen in the paper industry, did you not? A. Yes, sir.

Q. And you also know that that case went to the National Labor Relations Board, do you not?

A. I have no knowledge of it.

Q. Your investigation didn't bring that out?

A. I had personally had no knowledge of it going to any National Labor Relations Board.

Q. Mr. Stitt, on the Sunday that you are now talking about, the Sunday that you said he spent four hours at your home, didn't you tell him that "Townsend, the trouble with you is that [210] you are too good a union man?"

A. I did not tell him that.

Q. You are sure you didn't tell him that?

A. Absolutely sure. I told him what I have stated earlier.

Q. Didn't you also tell him, Mr. Stitt, or try to tell him that the Union was trying to get your job? Didn't you tell him that? A. I did not.

Q. Didn't you in that four hour conference try

(Testimony of Claude M. Stitt.)

to get Mr. Townsend to file a suit against the Union?

Mr. Holmes: Your Honor, these matters I think are totally immaterial. Apparently counsel is trying to lay some foundation here for some controversy between the Company and the Union or the Plaintiff and the Union, or the Plaintiff and the Company, based on the National Labor Relations Act, which is totally immaterial.

Mr. Garry: I might add that I didn't bring up this question now, because they brought it up in his direct examination. He said he spent two hours discussing unionism. I didn't bring it up.

The Court: Let me say this: I think the line of questioning is material because it goes to the frame of mind of Mr. Stitt here who occupies a position of supervision in the plant, and he is the one who may or may not have had a part in entering into this contractual relationship and the termination of any [211] rights that Mr. Townsend may or may not have had.

Mr. Holmes: I submit, your Honor, Mr. Stitt's frame of mind in September after Mr. Townsend had been told he was not going to be employed is immaterial.

The Court: Well, the matter was still under consideration, and I think that you have to hear the whole story. Whatever Mr. Stitt's story is, I want to hear it.

Mr. Garry: If your Honor please, I might also add, bearing in mind this exhibit we have

(Testimony of Claude M. Stitt.)

offered, Exhibit No. 4, signed by Mr. Van Voorhis, Plant Manager, Antioch Division, who isn't even under this man.

Mr. Holmes: He is plant engineer, not Plant Manager.

Mr. Garry: Plant Engineer.

The Court: The point is I don't want to have the case argued now. I was a little bit in error when I spoke of his frame of mind. I am interested in what the fact is, what he told Mr. Townsend, and what Mr. Townsend told him. On this subject I am going to allow counsel to cross-examine on it. He apparently has knowledge of what occurred there, and I want to hear the story.

Mr. Garry: Now, Mr. Stitt, you say you had a conversation some time in the middle of August with Mr. Townsend when he was out there doing janitor work in your plant; is that right?

A. That's right.

Q. That is when you said that you had this emergency and you [212] had to have him. Do you recall having a conversation with him at that time in reference to transportation?

A. Yes, sir, I have so testified.

Q. Isn't it a fact that Mr. Townsend said to you, "Mr. Stitt, I have been waiting a long time for that recovery job. Now I have also been waiting a long time for my transportation fare; when do I get it?" and isn't it a fact that you told him just as soon as the recovery department opened up and he went to work there he would get his

(Testimony of Claude M. Stitt.)

transportation at that time? Isn't that the fact?

A. The answer to that is "No." I will repeat again, as far as I recall the conversation, Mr. Townsend stopped me and asked me if it was true that certain individuals had received compensation for their transportation, and I told him the answer to that was yes. And he said "When do I get mine?" And I told Mr. Townsend that under two contentions he was not entitled to any consideration for a transportation rebate because, in the first place, on that particular day he was not an employee of the San Joaquin Division, and that no commitment had been made to him and he had come out here on his own.

Q. Isn't it a custom for the Company to be paying the transportation of delegates to union conventions? A. No, sir. [213]

* * *

The Court: Did you pay the expenses of a delegate to the convention?

A. The Company has never paid the expenses of any delegate to any convention.

Q. (By Mr. Garry): Then will you kindly, Mr. Stitt, go over the conversation you had with Mr. Townsend relative to the discussion of transportation?

A. He stopped me on what we term the machine room floor and propounded the question to me, "Is it true that certain individuals have received compensation for what they have been out relative to transportation costs?" I told him "Yes." He

(Testimony of Claude M. Stitt.)

said, "When am I going to get mine?" I told Mr. Townsend he wasn't entitled to compensation because of two facts, one being that he was not as of that date an employee of the [214] San Joaquin Division; the second being that he had come out here on his own and we had made no commitment to him relative to compensating him for his transportation costs.

Q. On the date August 14, 1949, Mr. Stitt, how did you know whether you had made any commitments to him or not when you have already testified that you didn't go into all this record until after the turmoil started some time in September?

A. Because when Mr. Townsend showed up I asked our personnel man and Mr. Lindley if they had made any commitments to him. The answer to that was "No" by both parties.

Q. When did you ask him that, Mr. Stitt?

A. The day that I was first introduced to Mr. Townsend.

Q. What day was that?

A. I would say that was about the middle of November of 1948.

Q. I call your attention to a letter dated October 19, 1948, signed by Mr. Lindley addressed to Mr. Townsend and ask you if you had ever seen that before the date August 14, 1949?

A. I have seen a copy of it.

Q. You saw that before August 14, 1949?

A. Yes, a copy of that.

Q. What day did you see it, sir?

(Testimony of Claude M. Stitt.)

A. The day after it was mailed out. I saw the copy the day after it was mailed out. [215]

* * *

Q. If you saw it the very next day after it was sent out, why did it take you so long to answer the question if you had seen it before August 14, 1949?

A. Because I wasn't sure as to whether you stated 1948 or 1949; that is why I was thinking as to whether to answer right off hand, as to whether I had heard correctly '48 or '49.

Q. Mr. Stitt, there wouldn't be any object in my saying August, 1948, because you didn't hear of this man in August, 1948, did you?

Mr. Holmes: Your Honor, I don't think argument with the witness is proper.

The Court: That is argument.

Mr. Garry: During this period of your advertising in this trade journal, Mr. Stitt, how many people did you contact and employ in your pulp mill? [216]

* * *

The Court: The number of people that they hired and employed during that time is immaterial; but I am concerned, too, or I do want to know what response he got from that advertisement. Like undoubtedly Mr. Townsend answered in response to that, did you have many others that you know of?

Mr. Garry: He has already testified, if your Honor please, he got about 70.

(Testimony of Claude M. Stitt.)

The Court: Is that correct?

A. Yes, we got a very good response.

* * *

Q. (By Mr. Garry): How many of those 70 men did you hire, Mr. Stitt?

A. I haven't any data on hand to tell you the exact number.

Q. Did you pay the transportation costs of those other men who came there?

Mr. Holmes: Your Honor, it is immaterial whether they paid transportation costs of anybody else, which would necessarily depend upon the arrangement with those other people.

The Court: If there were others.

Mr. Holmes: I think if he is going to go into that, we may have to go into every employment for all those people.

The Court: I know it opens a wide field, but I think he is entitled to go into the policy they followed. Mr. Stitt [217] has testified that they paid some transportation expenses. What transportation expenses they paid, what policy they followed on it, I think is a proper subject of examination. Answer the question.

Will you read it to him, Mr. Reporter.

* * *

The Court: You are referring to the 70 or approximately 70 people that he said responded to the advertisement; isn't that correct, Mr. Garry?

Mr. Garry: That is right, sir.

A. The answer to that is "No; we didn't pay

(Testimony of Claude M. Stitt.)

the transportation of everybody that answered the ad."

The Court: Did you pay it to anyone that you know of?

The Witness: I would say "yes" to that, because we had established a policy that parties in certain key positions who we made commitments to, it was understood before they left that we would compensate them for their transportation.

The Court: In other words, in some cases you had commitments for transportation?

The Witness: Yes, that was all definitely understood before the parties left their homes and moved up here.

The Court: Any further questions?

Q. (By Mr. Garry): How was this understanding arrived at? [218]

A. In some cases the parties had come out there on their own and made the personal contact with us; others through parties that we knew in certain instances, who we had asked for information as to qualifications, physically, so on and so forth. These we had received information on, how we were getting most of it by correspondence. In those other cases we had commitments before they left.

Q. In other words, these other men that you brought down here were done by correspondence also, isn't that right?

A. Either that or personal contact with us.

Q. Did you by any chance bring these people—

(Testimony of Claude M. Stitt.)

let us take one particular case of a person that you hired from without the State of California and paid his transportation down here, and let us follow the procedure for just a minute. Do you recall such a case? A. Yes.

Q. You have that particular person in mind. Did you have him examined physically before you brought him down to California?

A. No, we had an understanding with him that he came subject to the passing of the physical examination; if he didn't pass the physical examination it was his risk.

Q. In other words, then he would have to go back? A. That's right.

Q. Did you also check up on his qualifications before he came [219] down?

A. I have already answered "yes" to that. I will answer it again, yes.

Q. I am somewhat interested, Mr. Stitt, because I am trying to find out what happened in the case of Mr. Townsend. You received a letter and so on. You put your ad in sometime in June or July, isn't that right, of 1948? A. That's right.

Q. And you received about 70 inquiries, isn't that right? A. That's right.

Q. And Mr. Townsend happens to be one of them? A. Yes, sir.

Q. That inquired and sent you communications. Now his communication was sent to you on the 26th day of August. On the first day of September, 1948, you sent to him a letter signed by yourself

(Testimony of Claude M. Stitt.)

returning his original reference that he had sent to you and you also asked him to sign an application blank, isn't that correct?

A. That is right.

Q. Which came to you about the 7th or 8th day of September, isn't that correct?

A. That is right.

Q. What I am trying to find out—Mr. Townsend didn't get down to Antioch until the 15th day of November, 1948. What I am trying to find out, how long does it take you to investigate [220] an application before he comes down to Antioch to go to work for your firm?

A. It depends upon the circumstances and what we find out.

Q. I don't quite understand that answer. Will you explain it a little bit more?

A. When I say "upon the circumstances," we may get a report which is contrary to another report; then we will try to get a third party who may not have been given to us by the party involved, by writing back to somebody in that area who has a mill, asking them if they know of anybody who was in the employ of the Company, when said Mr. "X" was employed by that concern, and they in turn give us their report.

Q. Mr. Stitt, in your experience you have handled thousands of men and you have had experience in leadership?

A. I have handled what?

Q. You have got experience in leadership, ex-

(Testimony of Claude M. Stitt.)

perience in managing men and also bringing in new employees into a firm, haven't you?

A. That's right.

Q. You took time, as busy as you are, Mr. Stitt, to answer an inquiry put by a man in Tuscaloosa, Alabama in a letter dated September 1st and also took time to have his recommendation that he had sent you from this pulp mill copied and you sent the original back. You also told this man, Mr. Stitt, that "Mr. Lindley will be on the job about the first day of October and [221] he will get in touch with you." I take it you had also taken opportunity to write to this firm that sent you the reference, because I also presume from your experience in the industry that you are familiar with this company that you had the recommendation from; isn't that correct?

A. Well, I didn't write to the concern, and I might explain to you why I personally answered the letter. When that inquiry came in I didn't have a personnel manager at the San Joaquin Division. The staff consisted primarily of about three or four parties. We had been engaged prior to that time in engaging supervisory staff members, and when Mr. Townsend came into the picture there had not been any commitments made to any individual and there wasn't for some time, to wage earners, relative to transportation. And the reason I personally answered the letter first was because I did not have a personnel manager; we weren't in a position at that time to develop

(Testimony of Claude M. Stitt.)

the thing. The personnel manager came in shortly afterwards, Mr. McCuish, the personnel manager, and Mr. Lindley were then instructed, along with the other key supervisory members, on matters of policy, on how to handle bringing in new employees. Then after we got our supervisory staff there the question was then settled who was to receive—what positions were to receive compensation for traveling.

Q. Now, Mr. Stitt, you have already testified that on the 20th day of October, 1948, you saw the letter that Mr. Stitt [222] had written the day after—

A. There is something wrong there.

The Court: You mean Mr. Lindley, don't you?

Mr. Garry: Mr. Lindley; I am sorry—that letter that had been written by Mr. Lindley to Mr. Townsend dated the 19th day of October, 1948, you saw it on the day after, the 20th; that letter also referred to the telephonic communication on the afternoon before.

The Court: You mean the telephone conversation? Is that what you mean? You said telephonic communication.

Mr. Garry: Yes.

Mr. Holmes: That letter speaks for itself; it is in evidence; rehearing it here doesn't make any difference.

The Court: No; he just wants to know if that is not a correct resume of the facts.

Mr. Garry: That is right.

(Testimony of Claude M. Stitt.)

The Court: It is preliminary to another question.

Q. (By Mr. Garry): Isn't that a correct resume of the facts according to your understanding? A. That's right.

Q. Did you ask Mr. Lindley at that time if he had personally checked up or had done anything to check up the references for Mr. Townsend?

A. I didn't ask him the question, because in my position as manager of the plant I saw copies of all correspondence that [223] went out. I had seen no copy of any correspondence going out relative to the party involved. When I received copies I asked Mr. Lindley if during his phone conversation any commitment had been made. The answer to that was "No," because he said, "Based on your instructions and the policy that we have been instructed at our morning meetings, we were not to make any commitment to anyone, neither were we to make any commitment until such time as we personally investigated all of the references and qualifications of the person involved."

Q. Was it because you read the letter of October 19, 1948, that prompted you to ask Mr. Lindley that question?

A. Yes, because this was the first batch of correspondence that I had seen on it.

Q. You also know that the man working for you, Mr. Lindley, had never been in a supervisory capacity before; you also knew that, didn't you?

A. That is not correct, because the record will

(Testimony of Claude M. Stitt.)

show that he had been in a supervisory capacity at the St. Regis Paper Company. [224]

* * *

Redirect Examination

By Mr. Holmes:

Q. Mr. Stitt, how many trade journals carried this ad for applicants for work?

* * *

A. One.

Q. (By Mr. Holmes): Was that the Southern Pulp & Paper Manufacturer? A. Right.

Q. When you said you needed about 300 men were you referring to any particular department, or the whole plant, or just what were you referring to? A. Referring to the plant as a whole.

Q. How many men were needed in the pulp mill?

A. As to that particular department I have no figures that I can recall, as to just how many vacancies we had in the pulp [225] mill.

Q. How many were eventually employed in the pulp mill, that is, up to the time you started in regular operations?

A. The question would imply how many men are in the pulp mill now.

Q. How many men did you employ at this time it started its regular operations?

A. I will have to do a little figuring, because I don't recall the exact figure.

(Testimony of Claude M. Stitt.)

Q. Can you figure it quickly?

A. I can tell you roughly. [226]

* * *

The Witness: In round numbers, a rough figure would be 70.

Mr. Garry: May I ask what the question [227] was?

* * *

Q. (By Mr. Holmes): How many departments are there in that mill, Mr. Stitt?

A. There are the following main departments: Pulp mill, board mill, wood mill, maintenance and power, and there is the office.

Q. Is there a department head over each of those departments? A. That's right.

Q. Who is the department head over the pulp mill? A. Mr. Lindley.

Q. Mr. Stitt, in October or November of 1948, what was your expectation as to the opening date of the mill?

A. We had hoped to get started the late spring of 1949.

Q. Did you know definitely when it would open?

A. No.

Q. Mr. Stitt, I am going to show you two letters here, one of them on the letterhead of Fibre-Board Products, Inc., dated March 11, 1949, and another on the letterhead of the Gulf States Paper Corporation, Tuscaloosa, Alabama, dated May 23, 1949, and ask you if you have seen those two letters before? A. Yes, I have.

(Testimony of Claude M. Stitt.)

Q. There is a stamp in blue letters on each of these letters, "May 27, 1949, C.M.S."; "March 21, 1949, C.M.S."—what does that signify? [228]

A. It signifies that I have seen the copies of the letters then and passed them on to either the file or the party involved for further consideration on the facts at hand.

Q. Are those your initials, "C.M.S."?

A. That's right.

Q. You regularly stamp letters in that fashion that come to your hands? A. That's right.

Q. And this letter dated March 11, 1949, do you know whether that was sent out by Fibreboard Products, Inc.?

A. We have every reason to believe that it was because of the similarity in signatures.

Q. Isn't McCuish's signature on it?

A. That's right.

Q. Is that his signature? A. That's right.

Q. And this letter of May 23, 1949, addressed to Fibreboard Products, Inc., that was received by the Company? A. Yes. [229]

* * *

Q. (By Mr. Holmes): During the period between October of 1948—make it September, 1948—and September, 1949, was there an investigation made as to Mr. Townsend's qualifications and background? A. Yes, there was.

Q. And would you state the general nature of that investigation, how you went about it?

A. Letters were sent to parties that he had

(Testimony of Claude M. Stitt.)

given as references. Letters were sent to different companies that he had worked for. And after the receipt of their reply, since there was a conflict, we wrote additional letters as to some of the replies we got to parties that some of our staff members either knew, or some that we didn't know, inquiring as to the [232] background of Mr. Townsend.

Q. Did this cover a considerable period of time?

A. It did.

* * *

Q. One other question about this Exhibit E for identification: Is this a letter from Fibreboard and also a reply to Fibreboard?

A. It is.

* * *

Recross-Examination

By Mr. Garry:

Q. Did you receive any other correspondence besides this one from the Gulf States Paper Corporation, Mr. Stitt?

A. Yes, sir.

Q. Relative to Mr. Townsend's employment?

A. Yes, sir. [233]

Q. Where are they?

A. At this particular moment, I don't know.

* * *

Q. (By Mr. Garry): Who else have you written to, Mr. Stitt?

A. I don't recall all the other names that are involved at this time.

Q. Did you ever call the contents of this docu-

(Testimony of Claude M. Stitt.)

ment to the attention of Mr. Townsend?

A. Did I personally?

Q. Yes. A. No, sir.

Q. Did you ever have any of your subordinates do so?

A. I understand from rumor that Mr. Lindley told me that he did.

Q. Isn't it a matter of fact that Mr. Lindley told you that Mr. Fisher and Mr. Townsend came up to his house some time in February and Mr. Townsend told him the circumstances involved in that particular letter—told him himself?

A. I haven't any knowledge or any recollection of Mr. Lindley telling me of any such event taking place.

Q. You were in the court room yesterday throughout the day, [234] were you not?

A. Yes, sir.

Q. You heard Mr. Townsend testify to what he told Mr. Lindley in reference to the fight he had with this man?

A. Yes, sir, but I don't recall any testimony that he went out to Mr. Lindley's house and told him that.

* * *

Q. (By Mr. Garry): Then, Mr. Stitt, you knew a long time prior to this so-called "turmoil" that you are testifying to, what was in the recommendation from the Gulf States Paper Mill—whatever their name is?

* * *

(Testimony of Claude M. Stitt.)

A. Yes, sir.

Q. (By Mr. Garry): When you testified earlier this afternoon when I asked you the question when you made an investigation of Mr. Townsend's qualifications, you didn't mention that you already knew.

A. I stand by what I stated at the time: That one part of the evidence involved relative to an individual is not convincing enough to make a final judgment as to his qualifications for a [235] position. [236]

* * *

Q. (By Mr. Garry): Mr. Stitt, there was nothing in this letter from the Gulf States Paper Corporation that led you to decide not to hire Mr. Townsend, was there?

A. I think the very best evidence in answer to the question is to tell you that he was offered employment after that letter was received by the San Joaquin Division, by the San Joaquin [237] Division.

Mr. Holmes: Under your jurisdiction?

A. I, as manager of the plant, in one division. The policy of the plant was if one department head turned an individual down, that did not bar him from working for the Division.

* * *

The Clerk: Defendant's Exhibits E and F in evidence.

No. 29449
Debt Exhibit No. 101
Filed Oct 12 1950

FIBREBOARD PRODUCTS INC.

C. W. Calbreath, Clerk

By Louis P. Clum
Deputy Clerk



March 11, 1949

Personnel Manager
 Gulf States Paper Corp.
Tuscaloosa, Alabama

San Joaquin Division
Antioch, California

SAN JOAQUIN DIVISION

S.S.NO. 422-03-9553

Mr. W. H. Townsend is being considered for employment. Will you kindly fill out the form on the bottom of this letter and return it at your earliest convenience. Any information which you give us on this person will be appreciated and held strictly confidential.

Yours very truly,
FIBREBOARD PRODUCTS INC.
San Joaquin Division

Louis P. Clum
Personnel Department

Name of Applicant: Mr. W. H. Townsend, S.S.No. 422-03-9553
Present Address: Antioch, California

Would you consider this applicant for position of Recovery Room
No ? Please check as to your viewpoints on items below:

	Good	Average	Poor
Character.....	<u>—</u>	<u>—</u>	<u>✓</u>
Ability.....	<u>✓</u>	<u>—</u>	<u>—</u>
Ability to get along with fellow workers	<u>—</u>	<u>—</u>	<u>✓</u>
Standing in the community.....	<u>As not known</u>	<u>—</u>	<u>—</u>
Financial Status:			
(a) Credit standing	<u>?</u>	<u>—</u>	<u>—</u>
(b) Does he own his own car?	<u>Yes</u>	<u>No</u>	<u>—</u>
(c) Does he own his own home?	<u>Yes</u>	<u>No</u>	<u>—</u>

Has he ever participated in community activities? ? If so, explain nature.

Additional Remarks: THIS MAN WORKED FOR THIS COMPANY FROM 3-26-49 TO 7-23-55 IN OUR RECOVERY ROOM. HIS LAST JOB WAS EXPANSION OPERATION. HE WAS DISCHARGED FOR FIGHTING ON THE JOB BUT HIS WORK ABILITY WAS GOOD.
Date: 3-16-49

J. M. Clum
Signature

NOTE: SELF-ADDRESSED STAMPED ENVELOPE ATTACHED.

THE ABOVE INFORMATION WAS OBTAINED FROM HIS PERSONAL RECORD AND THE MEN THAT SUPERVISED HIS WORK ARE NO LONGER HERE

(Testimony of Claude M. Stitt.)

DEFENDANT'S EXHIBIT F

Gulf States Paper Corporation
Tuscaloosa, Alabama

May 23, 1949.

Fibreboard Products, Inc.,
San Joaquin Division,
P. O. Box CC,
Antioch, California.

Attention: Mr. T. M. Lindley,
Pulp Mill Superintendent.

Gentlemen:

We have your letter of May 16, 1949, in regard to a W. H. Townsend, S. S. 422-03-9553. At the time Mr. Townsend left our employ he did not have a Social Security Number, but the information given in this letter covers a Willie Hugh Townsend.

Mr. Townsend was employed by this Company from March 22, 1929, to July 23, 1935. During his period of employment, he served as water tender on our Recovery Plant boilers. He also served as liquor runner, Evaporator Operator and Concentrator Operator and his services on these jobs were entirely satisfactory as an operator.

His services were terminated because of a definite rule which we have in effect relative to fighting on company property. Townsend was involved in the

(Testimony of Claude M. Stitt.)

breaking of this rule and was, therefore, discharged.

Very truly yours,

GULF STATES PAPER
CORPORATION,

By /s/ J. M. ARMSTRONG, JR.,
Plant Personnel Director.

JMA:Jr:dmw

Received May 27, 1949.

[Endorsed]: Filed October 12, 1950.

The Court: Deemed read into evidence. They are part of the evidence. You will stipulate that they may be deemed read into evidence?

* * *

Q. (By Mr. Garry): In this letter that you had Mr. McCuish send out to the personnel manager of the Gulf States Paper [238] Corporation, Tuscaloosa, Alabama, you set forth in there what this man's character was, ability, ability to get along with fellow workers, standing in community, financial status: (a) Credit standing, (b) Does he own his own car? (c) Does he own his own home? Has he ever participated in community activities? If so, explain nature. Then "Additional Remarks." And I presume that you read the additional remarks in this case, did you not, Mr. Stitt?

A. I did.

(Testimony of Claude M. Stitt.)

Q. You are familiar with them now. Would you like to see them? (Handing document to witness.) "Additional Remarks: This man worked for this company from 3-22-29 to 7-23-35, in our recovery plant. His last job was"—

Mr. Holmes: "Evaporator" I think.

Mr. Garry: ——"evaporator operator. He was discharged for fighting on the job but his work ability was good." You read that? A. Yes.

* * *

Q. (By Mr. Garry): You had found by this time, Mr. Stitt, [239] that Mr. Townsend was a qualified recovery man in a pulp mill, had you not?

Mr. Holmes: That question is ambiguous. By what time?

Mr. Garry: By the time of August 31, 1949.

A. I can't answer your question directly, because in my position I was not a party to pass on the qualifications and the recovery department. The recovery department has board machines, wood mill operator, and whatever it might be. That was up to the superintendent of the department, part of his responsibility to pass on the qualifications of an individual involved.

Q. Was Mr. Fuller working under your directions, Mr. Stitt?

A. The same as any other department head supervisor.

Q. Who was Mr. Fuller's immediate superior?

A. Myself.

(Testimony of Claude M. Stitt.)

Q. Was it under your direction that Mr. Townsend was offered a job by Mr. Fuller in the paper mill department? A. No.

Q. By whose direction was it, sir?

A. It wasn't anybody's direction that I know of, because as I was saying, an applicant, after one department head had not seen fit to engage him because in his estimation of lack of qualifications, the application that was still on file was turned over to another department head.

Q. Did you tell that to Mr. Fuller [240] yourself?

A. No; that was the policy through our personnel department established months and months prior to the date there.

Q. And yet, Mr. Stitt, something that you say that you had nothing to do with, how did you hear, prior to the time that Mr. Van Voorhis wrote the letter of September 2nd, to Mr. Townsend, then how did you hear that Mr. Townsend had been interviewed by Mr. Fuller on August 31, 1949?

A. It was reported to me in the personnel department, namely Mr. McCuish, that a position had been offered to Mr. Townsend, I think it was on a Wednesday the latter part of August, and that he had seen fit to turn it down.

Q. When did he tell you that, sir?

A. Oh, I think it was on the following Thursday.

Q. On the following Thursday?

A. After the Wednesday of the interview.

Q. On the following day? A. Yes.

(Testimony of Claude M. Stitt.)

Q. Then did you immediately contact Mr. Van Voorhis at the other plant—I don't know what you call the other plant——

Mr. Holmes: Antioch Division, I think the record shows.

Q. (By Mr. Garry): Antioch Division plant. Did you call that plant immediately yourself?

A. No, sir, I had no contact with that plant at all.

Q. I thought you testified earlier that you told Mr. Van Voorhis that Mr. Townsend had turned down a job on August 31st? [241]

* * *

The Court: Who did you notify, if anyone?

A. I wrote a letter to the plant manager, Mr. Sanford.

* * *

Q. (By Mr. Garry): When did you do that? That is what I am trying to find out?

A. I think it was on the Thursday after this Wednesday, which would be probably the last Thursday in August.

Q. What was your interest in writing that letter, Mr. Stitt?

A. The reason the letter was written, because I had a telephone call from Mr. Sanford asking as to whether we had any further need for Mr. Townsend's services. The letter speaks for itself. It is to the effect that Mr. Townsend had been offered a position [242] and he had seen fit to turn it down.

(Testimony of Claude M. Stitt.)

and at that particular moment they could do what they wanted with him.

* * *

Mr. Holmes: Your Honor, there is this matter of the interrogatories, questions propounded both by counsel for the defendant and counsel for the plaintiff, to Mr. Utley.

The Court: I have read them.

Mr. Holmes: And there is a stipulation signed by the parties pursuant to which the interrogatories were submitted to Mr. Utley. I want to offer the stipulation and the questions on both direct and cross-examination, and the answers on both direct and cross-examination in evidence at this time.

The Court: Is there any objection to that, Mr. Garry? [243]

Mr. Garry: No objection, your Honor.

The Court: All right; the stipulation and the interrogatories both on direct and cross-examination——

Mr. Holmes: And the answers.

The Court: ——and the answers will be admitted into evidence and are deemed read into the record.

* * *

W. H. TOWNSEND

the plaintiff, recalled in rebuttal. [244]

* * *

Direct Examination

By Mr. Garry:

Q. Mr. Townsend, do you recall visiting Mr. Lindley at his home?

A. Yes, I visited him at his home one time. That was on February 8, 1949, and that is the only time I have ever been to Mr. Lindley's home. That was in the presence of Mr. Carl R. Fisher, who is now working as a boilermaker for the Southern Pacific Railroad at Gerber, California. In the presence of Mr. Fisher I had a conversation with Mr. Lindley.

* * *

Q. (By Mr. Garry): What conversation did you have with him?

A. I asked him to give Mr. Fisher a job as first helper on the recovery boiler; told him that Fisher had worked at Tuscaloosa for the North Carolina Pulp Company and had been carrying a card as a boilermaker since 1918, and he was a union [245] boilermaker and a good man, he was my brother-in-law.

Q. Did you discuss anything else with him?

A. Mr. Lindley asked me at that time why I left the Gulf States Paper Company, and I told him the same as I have told the Court here in the early part of the testimony; a man told me to kiss his ass one day, and I told him that where I

(Testimony of W. H. Townsend.)

come from people didn't tell other people that, and I knocked him down. Then I called Charlie Barlow (?) who at the present time is superintendent at the Gulf States Paper Company.

Q. Did you tell him all this?

A. I told Mr. Lindley that. I told Mr. Lindley——

Q. Go ahead.

A. Mr. Lindley said "Under the same conditions I would probably do the same if a man had told me to kiss his ass." I said, "As soon as I knocked him down, I knew the policy of the Company was to fire anybody for fighting, so I immediately picked up the telephone and I called Charlie Barlow (?) and said I had knocked the man down." He said, "How about staying until the end of the day?" I said "O. K." I went ahead and worked until 2:00 o'clock. At that time we were working six hours a day.

Q. Had you been working for the Antioch Division right up to that time?

A. September 2nd.

Q. And who did you work under there? [246]

A. I worked under Mr. Walcott was the Master Mechanic and Mr. Van Voorhis was the plant engineer I worked under. He was my big boss, Mr. Van Voorhis.

Q. You worked under him, did you not?

A. Yes, sir, from the 22nd day of November, 1948, until the 2nd day of September, 1949.

(Testimony of W. H. Townsend.)

Q. (By Mr. Garry): When did you go to work when you got to Antioch?

A. I arrived here on a Monday night and I went to work on Tuesday of the next week, to the best of my recollection, either the 22nd or 23rd of November, 1948, for the Antioch plant.

Q. What date was the election of the Union delegate to the [247] conference up north?

A. August 3rd.

* * *

Q. (By Mr. Garry): When is the first time that you ever had anyone tell you that you weren't going to be hired in the pulp mill?

A. On Sunday, August 28, 1949, I was told by Mr. Lindley in the personnel manager's office, Mr. McCuish's office—— [248]

* * *

Q. (By Mr. Garry): That was the first and only time? A. That's right.

Q. That was the first time you had ever had anybody tell you that your application would not be considered, is that right?

A. That is the only time I was told at the San Joaquin. I was notified September 2nd then that I had no job at the Antioch mill.

Q. You were let out there too?

A. That's right.

Q. And in this conversation you had with Mr. Stitt on August 14, 1949, with reference to transportation—will you give that to us again?

A. I was sweeping out in the paper mill that

(Testimony of W. H. Townsend.)

day, I was sweeping in the machine room, and talking to Mr. Stitt. I told Mr. Stitt, I says, "This is August 14th. I came out here the 15th of last November." I told Mr. Stitt that I had come there at Antioch the 15th of November, 1948, and I said, "Now it is the 14th of August." I said, "I am a man of 20 years experience"—I was pushing a broom—"I was general foreman in charge of production for a few years." I said, "I am willing to push a broom." I says, "I will shovel crap; I am a man that will do anything that you want, but," I says, "I would like to know when I am going to get transportation, because some of these boys have gotten their money." I says, "I have been told that." He says, "You can't get your money [249] because you never went to work for the San Joaquin Division." He says, "You are working for the Antioch Division; we don't have any jurisdiction there." I says, "Yes, sir." He says, "It will only be a little while until you are an operator in the recovery room over here. Whenever you start on the Company's pay roll at the San Joaquin Division, then we will give you transportation from Tuscaloosa, Alabama, to Antioch."

Mr. Garry: No further questions.

Cross-Examination

By Mr. Holmes:

Q. Did he say what transportation he would pay?

(Testimony of W. H. Townsend.)

A. He said he would pay my transportation expense from Tuscaloosa, Alabama, to Antioch; there was no commitment for any certain amount or anything; he just said my transportation would be paid for me and my family.

* * *

[Endorsed]: Filed August 3, 1951. [250]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Complaint filed in the Superior Court.

Petition for removal.

Notice of filing petition for removal.

First amended complaint.

Interrogatories propounded by defendant.

Answers to interrogatories propounded by defendant.

First amended answer.

Stipulation and deposition of E. R. Utley.

Order for judgment.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Statement of points on which appellant intends to rely on appeal.

Designation of portions of record to be contained in record on appeal.

Reporter's transcript (October 11, 12, 1950).

Plaintiff's exhibits 1 to 7.

Defendant's exhibits A to F.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 23rd day of October, 1951.

C. W. CALBREATH,

Clerk;

By /s/ D. M. TAYLOR,

Deputy Clerk.

[Endorsed]: No. 13141. United States Court of Appeals for the Ninth Circuit. Fibreboard Products, Inc., a Corporation, Appellant, vs. W. H. Townsend, Appellee. Transcript of Record. Appeal from the United States District Court, for the Northern District of California, Southern Division.

Filed October 23, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13141

W. H. TOWNSEND,

Plaintiff,

vs.

FIBREBOARD PRODUCTS, INC., FIRST DOE,
SECOND DOE, and DOE CORPORATION,

Defendants.

STATEMENT OF POINTS ON WHICH AP-
PELLANT FIBREBOARD PRODUCTS,
INC., INTENDS TO RELY ON APPEAL

Appellant Fibreboard intends to rely upon the
following points:

1. The District Court erred in entering judgment for plaintiff against defendant Fibreboard.

2. The District Court erred in failing to enter a judgment dismissing defendant's complaint and awarding costs to defendant Fibreboard.

3. The District Court erred in holding that plaintiff and defendant Fibreboard entered a written contract.

4. The District Court erred in holding that plaintiff and defendant Fibreboard entered an oral contract.

5. The District Court erred in holding that

plaintiff and defendant Fibreboard entered an oral and written contract.

6. The District Court erred in failing to hold that no legally cognizable contractual relationship for permanent employment exists or existed between plaintiff and defendant Fibreboard due to vagueness and uncertainty.

7. The District Court erred in failing to hold that no enforceable contractual relationship for permanent employment exists or existed between plaintiff and defendant Fibreboard, due to the Statute of Frauds.

8. The District Court erred in holding that plaintiff and defendant Fibreboard agreed that plaintiff should be employed as a recovery operator.

9. The District Court erred in failing to hold that, even if plaintiff and defendant Fibreboard had agreed to a contract of employment, the alleged contract was for an indefinite period of time.

10. The District Court erred in failing to hold that any contract of employment between plaintiff and defendant Fibreboard was lacking in mutuality.

11. The District Court erred in failing to hold that plaintiff was engaged in a temporary job at the time of the alleged contract and that plaintiff did not leave a permanent job or any other job at the request of the defendant Fibreboard or its agents, or in order to perform a contract with defendant Fibreboard.

12. The District Court erred in failing to hold that plaintiff left temporary employment and removed his family to California and paid his expenses for such move and disposed of his furniture and personal belongings at his own risk and for his own purposes and not in reliance upon or in consideration of any promise, contract, or agreement for permanent employment by defendant Fibreboard or its agents.

13. The District Court erred in holding that plaintiff has performed all things and matters to be performed on his part and that defendant Fibreboard has wholly failed to perform things and matters on its part to be performed.

14. The District Court erred in failing to hold that defendant Fibreboard offered permanent employment to plaintiff and that plaintiff refused the same.

15. The District Court erred in failing to find that plaintiff failed to minimize his damages by accepting employment offered him by defendant on or about September 1, 1949.

16. The District Court erred in failing to hold that defendant Fibreboard has performed all things and matters on its part to be performed.

17. The District Court erred in holding that defendant Fibreboard breached a contract of employment with plaintiff.

18. The District Court erred in holding that

plaintiff is entitled to judgment in the sum of \$2,530.24, together with costs of suit.

19. The District Court erred in failing to hold that the complaint should be dismissed and in failing to award defendant Fibreboard its costs.

Dated October 27, 1951.

/s/ SAMUEL L. HOLMES,

BROBECK, PHLEGER &
HARRISON,

Attorneys for Appellant
Fibreboard Products, Inc.

Receipt of copy acknowledged.

[Endorsed]: Filed October 30, 1951.